

No. 15021

United States
Court of Appeals
for the Ninth Circuit

EUGENE RAYSON, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern
District of California, Central Division

FILED

APR - 2 1956

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

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Los Angeles 14, California.

Attorney for Appellee:

LAUGHLIN E. WATERS,
United States Attorney,
600 Federal Building,
Los Angeles 12, California. [1*]

* Page numbers appearing at foot of page of original Transcript of Record.

In the United States District Court for the Southern District of California, Central Division

September, 1955, Grand Jury

No. 24568-Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLLIE W. KELLEY and EUGENE RAYSON,

Defendants.

INDICTMENT

[U.S.C., Title 18, Sec. 371; U.S.C., Title 21, Sec. 174—Conspiracy, illegal concealment, sale of narcotics]

The grand jury charges:

Count One

[U.S.C., Title 18, Sec. 371]

Commencing prior to the date of the commission of the first overt act hereinafter set forth and continuing to and including October 6, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Ollie W. Kelley and Eugene Rayson and divers other persons to the grand jury unknown did agree, confederate, and conspire together to commit offenses against the United States as follows: to knowingly receive, conceal, sell, transport, and to facilitate the transportation, concealment, and sale of, certain narcotic drugs after importation in vio-

lation of United States Code, Title 21, Section 174; the objects of said conspiracy were to be accomplished as follows: defendant Ollie W. Kelley was to purchase narcotic drugs, to conceal them, and to deliver them to defendant Eugene Rayson [2] and he was to direct persons interested in buying such drugs to defendant Eugene Rayson who would conceal the drugs and sell them to such persons; and at all times herein mentioned said narcotic drugs, as the defendants then and there well knew, had been imported into the United States contrary to law; and

To effect the objects of said conspiracy the defendants committed the following overt acts in Los Angeles County, California:

(1) On or about August 22, 1955, defendant Ollie W. Kelley had a conversation with Norman Fletcher;

(2) On or about September 13, 1955, defendant Ollie W. Kelley had a conversation with Norman Fletcher;

(3) On or about September 14, 1955, defendant Eugene Rayson had a telephone conversation with Norman Fletcher;

(4) On or about September 14, 1955, defendant Eugene Rayson received \$700.00 from Norman Fletcher;

(5) On or about September 14, 1955, defendant Eugene Rayson delivered 2 ounces, 82 grains of heroin to a location in Los Angeles County, California; and

(6) On or about September 22, 1955, defendant Ollie W. Kelley had a conversation with Norman Fletcher. [3]

Count Two

[U.S.C., Title 21, Sec. 174]

On or about September 13, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Ollie W. Kelley and Eugene Rayson did, after importation, knowingly and unlawfully receive, conceal, and transport, and facilitate the concealment and transportation of, a certain narcotic drug, namely: approximately 2 ounces, 82 grains of heroin, and knowingly assist in so doing, which said heroin, as the defendants then and there well knew, had been imported into the United States of America contrary to law, in violation of United States Code, Title 21, Section 174. [4]

Count Three

[U.S.C., Title 21, Sec. 174]

On or about September 13, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Ollie W. Kelley and Eugene Rayson, after importation, did knowingly and unlawfully sell and facilitate the sale of a certain narcotic drug, namely: approximately 2 ounces, 82 grains of heroin, to Norman Fletcher, which said heroin, as the defend-

ants then and there well knew, had been imported into the United States contrary to law.

A True Bill.

/s/ ORVILLE J. HARRELL,
Foreman

/s/ LAUGHLIN E. WATERS,
United States Attorney [5]

[Endorsed]: Filed November 16, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Arraignment and Plea

Date: November 21, 1955, at Los Angeles, Calif.

Present: The Hon. Harry C. Westover, District Judge; Deputy Clerk: Mary O. Smith; Reporter: S. J. Trainor; U. S. Att'y, by Ass't U. S. Att'y: Volney V. Brown, Jr.; Counsel for Defendants: Wm. H. Neblett and Harry W. Dudley.

Defendants present (on O/R).

Proceedings: For arraignment and plea of each defendant on all three counts of indictment. Each Defendant is arraigned and pleads not guilty as charged in each of counts 1, 2 and 3 of the Indictment.

It Is Ordered that this cause is referred to the Probation Officer for pre-sentence investigation and report, and the cause is continued for sentence on counts.

It Is Ordered that this cause is set for trial Nov.
29, 1955, 10 a.m.

JOHN A. CHILDRESS,

Clerk

[6]

[Title of District Court and Cause.]

WAIVER OF JURY

The above cause coming on regularly for trial, defendants being present with counsel, Wm. H. Neblett and Harry W. Dudley, Esq., and the defendants being desirous of having the case tried before the Court without jury, now requests of the Court that the case be so tried and hereby consents that the Court shall sit without a jury and hear and determine the charges against the defendants without a jury.

Dated: November 29, 1955.

/s/ OLLIE W. KELLEY,

/s/ EUGENE RAYSON,

Defendants in pro per.

I have advised the defendant fully as to his rights and assure the Court that his request for a trial without a jury is understandingly made.

/s/ WM. H. NEBLETT,

/s/ HARRY W. DUDLEY,

Attorneys for Defendants

The United States Attorney consents that the request of the defendant be granted and that the trial proceed without a jury.

/s/ ROBERT J. JENSEN,
Assistant U. S. Attorney

Approved:

/s/ HARRY C. WESTOVER,
U. S. District Judge [7]

[Endorsed]: Filed November 29, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Dec. 1, 1955, at Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge; Deputy Clerk: Mary O. Smith; Reporter: S. J. Trainor. U. S. Att'y, by Ass't U. S. Att'y Robert J. Jensen; Counsel for Defendants: Wm. H. Neblett and Harry W. Dudley.

Defendants present (on O/R).

Proceedings: For further trial.

Counsel for Gov't argues to the Court.

Attorney Neblett argues and Attorney Dudley argues.

Court makes a statement and Finds Def't Kelley not guilty on each of counts 1, 2, and 3, and Finds Def't Rayson not guilty on count 1, and guilty on counts 2 and 3 of Indictment.

Court Orders cause referred to Probation Officer

for investigation and report as to Def't Rayson and continued to Dec. 19, 1955, 2 p.m., for sentence of Def't Rayson on counts 2 and 3, and that Def't Rayson remain on bond posted in Case No. 24,517-Cr., and that bond of Def't Kelley in Case No. 24,517-Cr. is exonerated.

JOHN A. CHILDRESS,

Clerk

[8]

[Title of District Court and Cause.]

NOTICE OF HEARING OF MOTION FOR
NEW TRIAL

To Plaintiff Herein, and to the United States Attorney:

You, and Each of You, Are Hereby Notified that on Monday, December 19, 1955, at the hour of 2 p.m., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Harry C. Westover, Judge of the above entitled court, defendant Eugene Rayson will make a motion for a new trial, which said motion is hereunto attached.

Dated: December 6, 1955.

WM. H. NEBLETT,

HARRY W. DUDLEY,

/s/ By HARRY W. DUDLEY,

Attorneys for Defendant,

Eugene Rayson

The Court fixes the 19th day of December at 2 p.m. for said motion and the time is extended accordingly.

12/6/55 /s/ H. C. W., Judge [9]

MOTION FOR NEW TRIAL

Defendant, Eugene Rayson, moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the conclusion of the Government's evidence.

2. The decision is contrary to the weight of the evidence.

3. The decision is not supported by substantial evidence.

4. The Court erred in admitting testimony of the witness, Norman Fletcher, to which objections were made.

5. The Court erred in admitting testimony of the witness, M. P. Richards, to which objections were made.

6. The Court erred in admitting testimony of the witness William R. Farrington, to which objections were made.

7. The Court erred in admitting testimony of the witness, A. F. Landry, to which objections were made. [10]

8. The Court erred in ruling that the evidence did not disclose an entrapment of defendant.

9. The Court erred in ruling that the telephone conversations between the witness, Norman Fletcher, and defendant, a recording instrument at such times being attached to the telephone and recordings made of said conversations, were admissible.

10. The Court erred in denying defendant's motion to strike the testimony of telephone conversations between the witness, Norman Fletcher, and defendant, a recording instrument at such times being attached to the telephone and recordings made of such conversations.

Dated: December 6, 1955.

WM. H. NEBLETT,
HARRY W. DUDLEY,

/s/ By HARRY W. DUDLEY,

Attorneys for Defendant,
Eugene Rayson [11]

Acknowledgment of Service attached. [13]

[Endorsed]: Filed December 6, 1955.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Date: Dec. 19, 1955, at Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge; Deputy Clerk: Mary O. Smith; Reporter: S. J. Trainor; U. S. Att'y, by Ass't U. S. Att'y

Robert J. Jensen; Counsel for Defendant: Wm. H. Neblett and Harry W. Dudley.

Defendant present (on O/R).

Proceedings: For hearing motion of Def't Rayson, filed Dec. 6, 1955, for new trial, and for sentence of Def't Rayson on counts 2 and 3 (finding of guilty).

Attorney Dudley argues in support of said motion for new trial.

Court orders said motion for new trial denied.

Attorney Neblett makes a statement on behalf of defendant.

Attorney Jensen makes a statement.

Court Sentences defendant to three years imprisonment on each of counts 2 and 3 of Indictment, to begin and run concurrently, and to pay a fine unto USA in sum of \$5. on each of said two counts, (2, and 3,) making a total fine of \$10.

On motion of Attorney Neblett for defendant, Court sets bond on appeal at \$5,000.

JOHN A. CHILDRESS,

Clerk

[20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Eugene Rayson, 624 East 97th Street, Los Angeles, California.

Names and address of Appellant's Attorneys: Wm. H. Neblett and Harry W. Dudley, Suite 927,

649 South Olive Street, Los Angeles 14, California.

Offense: The appellant was convicted on two counts of an indictment, one for the receipt, concealment and transportation of heroin, and the other for the sale of heroin, in violation of United States Code, Title 21, Section 174.

On December 19, 1955, the appellant, Eugene Rayson, was sentenced to the Federal penitentiary for three years and fined \$5.00 on each of the two counts above-stated. The sentences are to run concurrently. [21]

The appellant, Eugene Rayson, is at liberty on \$5,000.00 bail pending his appeal.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: December 23, 1955.

/s/ EUGENE RAYSON,
Appellant

WM. H. NEBLETT and
HARRY W. DUDLEY,

/s/ By WM. H. NEBLETT,
Attorneys for Appellant [22]

Affidavit of Service by Mail attached. [23]

[Endorsed]: Filed December 23, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 29, inclusive, contain the original

Indictment;

Waiver of Jury;

Notice of Hearing of Motion for New Trial;

Opposition to Granting Motion for New Trial;

Notice of Appeal;

Appellant's Designation of Record;

Appellee's Counter-Designation of Record; and a full, true and correct copy of the Minutes of the Court on November 21, 1955; December 1, 1955; December 19, 1955, which, together with the original reporter's transcript of Proceedings had on November 29, 30, and December 1, 1955, in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 1st day of February, 1956.

[Seal]

JOHN A. CHILDRESS,

Clerk

/s/ By CHARLES E. JONES,

Deputy

In the United States District Court for the Southern District of California, Central Division

No. 24517-24568—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EUGENE RAYSON and OLLIE W. KELLEY,
Defendants.

TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Tuesday, Nov. 29, 1955

Honorable Harry C. Westover, Judge presiding.

Appearances: For the Plaintiff: Laughlin E. Waters, United States Attorney, Los Angeles 12, Calif., by Robert John Jensen, Assistant U. S. Attorney. For the Defendants: William H. Neblett, Esq., 649 S. Olive St., Los Angeles, Calif.; and Harry W. Dudley, Esq. [1*]

(Other court matters.)

The Clerk: No. 3 on the calendar. 24517, United States vs. Eugene Rayson and Ollie W. Kelley for trial, and 24568, same defendants, for trial.

Mr. Jensen: The Government is ready.

Mr. Neblett: We were informed by Mr. Jensen yesterday who asked us if it was agreeable for us that the case be transferred to another department. I don't know what the situation is there.

The Court: I don't know either, Mr. Neblett, until I call the calendar and find out what I have

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

got left. I may not have anything left before I get through. I want to see how many cases we have ready for trial.

Mr. Neblett: We are ready for trial now.

The Court: You are ready for trial now?

Mr. Neblett: Yes, your Honor.

The Court: Before a jury?

Mr. Neblett: We waive a jury. We talked with the District Attorney about that and we agreed to waive a jury if it meets with the consent of this court, and we have signed it here. We will have the defendants sign it too, if necessary.

The Court: If you want to waive the jury I feel it is a compliment to the court. [4]

Mr. Neblett: If your Honor please, the defendants are here and we will ask them what their feelings are about it.

This is Ollie Kelley. Do you desire to waive a jury?

The Defendant Kelley: Yes, sir.

Mr. Neblett: This is Eugene Rayson. Do you desire to waive a jury?

The Defendant Rayson: Yes, sir.

The Court: It may be filed. Have you filled out the form?

Mr. Neblett: It hasn't been signed by the District Attorney yet, your Honor.

The Court: Now inasmuch as the jury has been waived, how long will it take to try the case?

Mr. Neblett: We don't exactly know. The District Attorney stated it will take about two days. I

think after we have waived the jury it will take about a day less.

Mr. Jensen: I think it will still run over until the second day.

Mr. Neblett: I think it requires about half a day to put on our case after the prosecution is through.

The Court: We will call the other case, Mr. Neblett.

(Other court matters.)

Mr. Jensen: Your Honor please, the Government in the case of Ollie W. Kelley and Eugene Rayson anticipated that that case would be transferred to Judge Yankwich. We have [5] our witnesses in the building but they are not all presently in the courtroom.

I wonder if your Honor would grant us a very short recess to assemble the witnesses.

The Court: All right. We can take a few minutes recess.

Mr. Neblett: We came up too without our information on the trial.

The Court: Why didn't you say so somewhere along the line?

Mr. Neblett: If your Honor please, it is all right with us. We said we are ready to go to trial and we will be. We may have to go back to the office for a short while.

The Court: You told me you were ready to go to trial immediately.

Mr. Neblett: I was. We were ready to go to

trial, but Mr. Jensen told us yesterday that he thought the case would go over to Thursday.

Mr. Jensen: I think your Honor originally anticipated this case going over.

The Court: This is the only case in which the jury was to be waived and I thought Judge Yankwich had better take a non-jury case and he agreed to take it, provided he could try it in one day. Well, now, I have only got the 1-day case. I dislike to send him a case that is going to take two [6] days. He said he is going to take it for one day. Of course we have got two days to try this case.

Mr. Neblett: We are ready. As soon as Mr. Jensen rounds up his witnesses we will be ready to go ahead. He has the laboring oar, so we can sit back.

The Court: How long will it take you to gather up your witnesses?

Mr. Jensen: I would like 15 minutes, your Honor.

The Court: We will take a recess until 10:35. That will give you about 17 minutes.

(Short recess.)

The Court: Call your first witness.

Mr. Jensen: The United States will call Albert Fletcher.

ALBERT FLETCHER

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Albert Fletcher.

(Testimony of Albert Fletcher.)

Mr. Neblett: If your Honor please, may I interrupt Mr. Jensen at this moment to say that the previous indictment, that it was brought to this court's attention the last time we were here, that the previous indictment against these two defendants, 24517, would, with the consent of the court, [7] be allowed to go along with this trial until the trial was completed and then on agreement, if the court approves it, with the District Attorney that the first indictment will be dismissed.

Is that correct?

Mr. Jensen: That is correct.

Mr. Neblett: That is my understanding, it will be dismissed.

Mr. Jensen: Has the witness stated his name for the record?

The Witness: Yes.

The Clerk: Yes.

Direct Examination

Q. (By Mr. Jensen): You reside in Los Angeles, California, do you not? A. I do.

Q. I will ask you whether or not you are acquainted with the defendant Ollie W. Kelley.

A. I am.

Q. Is he present in the courtroom this morning?

A. He is.

Q. Is he the gentleman to my right here in the gray suit? A. Yes, he is.

(Testimony of Albert Fletcher.)

Q. Are you also acquainted with the defendant Eugene [8] Rayson? A. I am.

Q. And is he also present in court?

A. He is.

Q. And he is the gentleman to my right in the tan jacket, is he not? A. That is right.

Mr. Jensen: May the record show that the witness has indicated the defendants Kelley and Rayson?

The Court: It may so show.

Q. (By Mr. Jensen): Mr. Fletcher, calling your attention to the month of August, 1955, and particularly to the 22nd thereof, I ask you whether or not you had occasion on that day to see the defendant Kelley. A. I did.

Q. Would you state where it was that you saw him? A. The La Jolla Cleaners.

Q. Is that located in Los Angeles?

A. It is.

Q. On what street?

A. On Sixth Street at Stanford.

Q. Could you tell us the approximate time of day? A. About 10:30.

Q. A.m. or p.m.? [9] A. P.m.

Q. Was there anybody else present at the time that you saw him? A. No.

Q. Did you have a conversation with him?

A. I did.

Q. Would you state the substance of the conversation as you recall it?

(Testimony of Albert Fletcher.)

A. As I walked into the La Jolla Cleaners, me and the defendant, Mr. Ollie Kelley, exchanged greetings——

Mr. Neblett: Excuse me one moment. I don't hear the witness very well. May I sit over here?

The Court: You can sit over there.

Q. (By Mr. Jensen): You said, I think, that you had gone into the La Jolla Cleaners and exchanged greetings with Mr. Kelley. Would you pick it up from there, please?

A. We exchanged greetings, and he told me that he had not seen me in quite a while.

I told him I hadn't been around, and I told him I was interested in buying some stuff.

He asked me, had I saw Rayson, and I told him no, I hadn't, and he went on to state that it wasn't anything in commission during that week, but there was a fellow in Los Angeles at the time, about a week ago, that had about 50 ounces [10] and I could have got a pretty good deal from him for approximately \$10,000 for the 50 ounces, which was about \$200 an ounce. And he got on the telephone and he made a phone call, which wasn't completed.

Q. Prior to his making that telephone call, did he inform you who he was attempting to call?

A. F. A.

Q. Who is this F. A.? A. Eugene Rayson.

Q. Is that a nickname of Mr. Rayson?

A. It is.

Q. Is he generally known by it? A. He is.

(Testimony of Albert Fletcher.)

Q. Go on.

A. And before I left the establishment he made a second call, and he also stated that he couldn't get in touch with him, and he asked me——

Mr. Neblett: If your Honor please, we object to that. I don't know who he is stating this to now.

Q. (By Mr. Jensen): This conversation that you are speaking about is still between yourself and Mr. Kelley? A. Mr. Kelley.

Mr. Neblett: But he is making a telephone call.

Mr. Jensen: I think you misunderstood. He hasn't said [11] that the call was completed.

Mr. Neblett: Excuse me.

Q. (By Mr. Jensen): Were these telephone calls placed in your presence? A. They were.

Q. Were any of the calls completed?

A. They wasn't.

The Court: What do you mean by "completed"? He didn't get the fellow on the other end?

The Witness: He didn't get the fellow on the other end.

The Court: Neither one of these calls?

The Witness: Neither one of those two calls.

Q. (By Mr. Jensen): Did your conversation with Mr. Kelley continue after the telephone calls?

A. Yes.

Q. What else was said?

A. He asked me, did F. A. know how to get in touch with me, and I told him yes, he did know how to contact me.

(Testimony of Albert Fletcher.)

Q. Was anything else said that you recall?

A. No. He told me that he would have him to call me. I left the establishment.

Q. That is, the defendant Kelley said he would have Rayson call you?

A. He would have Rayson to call me. [12]

Q. About how long did the conversation last between yourself and Mr. Kelley?

A. Between 10 and 15 minutes.

Q. Did you leave thereafter? A. I did.

Q. Now prior to your going down there on that particular occasion, had you been in contact with any police officers or agents of either the County of Los Angeles or the United States Government?

A. I was.

Q. Did those people consist of Mr. Richards of the Bureau of Narcotics and Sergeant Landry of the Sheriff's office and Deputy Farrington of the Sheriff's office? A. It did.

Q. Had they accompanied you down to the La Jolla Cleaners or in the vicinity?

A. They had.

Q. They didn't go in with you, however?

A. No, they didn't.

Q. Can you tell us briefly where they were at the time you went in?

A. Approximately a block away.

Q. That is the last time you observed them?

A. That was.

Q. Did you subsequently after this conversation

(Testimony of Albert Fletcher.)

rejoin [13] these police officers? A. I did.

Q. Did you have a subsequent conversation with Mr. Kelley at a later date? A. I did.

Q. Would that be on or about September 13, 1955? A. It was.

Q. During the period from August 22nd, '55, to September 13, '55, did you have occasion to see the defendant Rayson? A. I did.

Q. Would you state when and where this contact occurred?

A. It would be in the evening about 4:30 at 55th and Long Beach.

Q. That is in Los Angeles? A. It is.

Q. Did you stop to talk to him at that time?

A. I didn't.

Q. You just saw him?

A. I saw him and he waved.

Q. He waved to you? A. He did.

Q. Did you return his wave? A. I did.

Q. At that time were you in a motor vehicle or on foot or what? A. In a motor vehicle.

Q. Were you driving? A. I was.

Q. Where was Mr. Rayson?

A. He was standing on the corner.

Q. You didn't stop? A. I didn't.

Q. And nothing was said?

A. Nothing was said.

Q. Now coming back to September 13, 1955, you state that on that date you saw the defendant Kelley again? A. I did.

(Testimony of Albert Fletcher.)

Q. Would you state where you saw him?

A. In the La Jolla Cleaners.

Q. And the approximate time?

A. Around 12:30.

Q. That would be just after noon?

A. After noon.

Q. Was there anyone else present at that time?

A. There wasn't.

Q. Did you have a conversation with him?

A. I did.

Q. Would you give us the substance of that conversation, [15] as you recall it?

A. After we exchanged greetings that time I told Mr. Kelley that I hadn't—that F. A. had not got in contact with me, and he told me that F. A. had told him that he had seen me and waved at me and that I didn't say anything to him so he just had taken it for granted that I didn't want to see him at that time.

I told him I was interested in seeing him then, and he asked me, could he reach me at that same number.

I told him no, that I had a number that I would give him that he could reach me between the time of 8:00 and 10:30.

Q. Let me interrupt for a moment.

During this conversation did you discuss a possible purchase of narcotics with Mr. Kelley?

A. I did.

Q. What did you say to him in that regard?

(Testimony of Albert Fletcher.)

A. I told him that I wanted to get a couple of ounces of stuff, and he told me to contact Rayson.

Q. Did he say anything about whether or not a sale could be made of the narcotics?

Mr. Neblett: Your Honor please, we object to that as leading.

Mr. Jensen: I will withdraw it.

The Court: Sustained. [16]

Q. (By Mr. Jensen): Did he say anything else in regard to the narcotics?

Mr. Neblett: Your Honor please, we object to that as the same question in a different form. It is leading.

The Court: He has a right to ask him what the conversation was. Overruled.

Mr. Jensen: Would the reporter read the last question to the witness, please.

(The question referred to was read by the reporter as follows: "Q. Did he say anything else in regard to the narcotics?")

The Witness: He told me that after I gave him the number to call me, he told me that Rayson, it would have to be in the morning and that is why I gave the time between 8:00 and 10:00 o'clock.

Mr. Neblett: Your Honor please, we move that his conclusion as to why he gave the time between 8:00 and 10:00 o'clock be stricken out.

The Court: It may go out.

Q. (By Mr. Jensen): Mr. Fletcher, did Mr.

(Testimony of Albert Fletcher.)

Kelley make a statement about when a call could be made?

Mr. Neblett: Your Honor please, that is leading and we object to it on that ground. [17]

The Court: Overruled.

Q. (By Mr. Jensen): Will you answer the question, did Mr. Kelley tell you what time a call could be made? A. He did.

Q. In substance or effect, what were his words in that regard?

A. He told me it would have to be in the morning.

Q. Did you give him a place where you could be called? A. I did.

Q. Did you give him a telephone number?

A. I did.

Q. What telephone number did you give him?

A. Agent Richards'.

Q. Was that the home phone of Mr. Richards?

A. It is.

Q. Had you previously been furnished that telephone number? A. I had.

Q. Who gave it to you? A. Mr. Richards.

The Court: Do you remember the number?

The Witness: I do.

The Court: What is it?

The Witness: PLeasant 1-6408. [18]

Q. (By Mr. Jensen): Was there any more conversation at that time, Mr. Fletcher?

A. It wasn't.

(Testimony of Albert Fletcher.)

Q. Was there a time set for the telephone call?

A. Between the hours of 8:00 and 10:30 in the morning.

Q. On what day?

A. On the following day, the 14th.

Q. This time set was between yourself and Mr. Kelley on that occasion? A. It was.

Q. Did you have occasion to see Mr. Kelley again that day? A. No, I didn't.

Q. Calling your attention to September 14th, the succeeding day, were you at Mr. Richards' house on that occasion? A. I was.

Q. Approximately what time did you first arrive there? A. About 7:30 that morning.

Q. When you arrived there were there other people present? A. There was.

Q. Can you tell us who you recall to be there on that occasion?

A. Mr. Richards, Sergeant Landry, Deputy Farrington [19] and Deputy Stoups.

Q. When you speak of "deputies" you mean officers of the Los Angeles County Sheriff's office?

A. That is right.

Q. Did a telephone call come in at that time?

A. It was a telephone call about 10:00 o'clock that day.

Q. Did you answer the phone? A. I did.

Q. Did you recognize to whom you were speaking? A. I did.

Q. Will you state who it was?

(Testimony of Albert Fletcher.)

A. Eugene Rayson.

Q. Did anyone else listen in at that time to the telephone conversation? A. Yes.

Q. Do you recall who it was? A. Yes, sir.

Q. Who was it? A. Mr. Farrington.

Q. Would you give us the substance or effect of that conversation, as you recall it?

A. When the call first came through and I answered the phone——

Mr. Neblett: If your Honor please, we object to this [20] testimony on the ground there is no foundation laid for this telephone call in that he hasn't said he recognized his voice. He said he recognized who he was talking to, but that is a conclusion.

Mr. Jensen: May I clear the matter up, your Honor?

The Court: Yes, clear it up. As far as I know, he never talked to him before. I don't know.

Mr. Jensen: I will clear it up.

Q. How long have you been acquainted with the defendant Rayson? A. Since 1953.

Q. Have you had prior telephone conversations with Mr. Rayson? A. I had.

Q. Could you give us an estimate of how many?

A. Numerous. I had a whole lot so I couldn't say.

Q. Have you had person-to-person conversations with him? A. I have.

Q. Could you give us an idea how many of those you have had? A. Numerous times.

(Testimony of Albert Fletcher.)

Q. Now coming back to the morning of September 14th, you have stated that you took the telephone call. Will you state whether or not you recognized the voice of the person [21] speaking on the telephone? A. I did.

Q. To whom did it belong? A. Rayson.

Q. Did you have any doubt about that?

A. No, I didn't.

The Court: Did the fellow who was doing the calling give his name?

The Witness: I asked him.

The Court: What did you ask him?

The Witness: I asked when the call first come through, I asked the party—he said, "Hi."

I say, "What did you say?"

He said, "You know who this is?"

I said, "No."

He said, "This is F. A."

Mr. Jensen: Does your Honor have any more questions?

The Court: No.

Q. (By Mr. Jensen): This F. A., is that a nickname that you recognized? A. It is.

Q. To whom does it belong? A. Rayson.

Q. Have you heard other people call him by that name? A. I have. [22]

Q. Could you give us the substance or effect of the conversation that you had on the phone at that time?

(Testimony of Albert Fletcher.)

A. I told him, I said, "The Old Man gave you the number to call me, huh?"

Q. May I interrupt just a moment?

To whom did you refer when you said the Old Man?

Mr. Neblett: Just a moment, please. That is not asking for a conversation, this is a conclusion as to whom he referred to.

The Court: Sustained. He can give the conversation.

Mr. Jensen: If your Honor would set your ruling aside just a moment, I have asked him who he referred to and I think I can show, if your Honor will permit me, whom the other party on that call also understood to be that person. It is no conclusion as to whom he referred to, the present witness, and of course it is my duty to show that the other party understood it to be the same person, which I will also show.

Mr. Neblett: I think it is a conclusion, your Honor, as to who he referred to. That still is not a fact, it is just what he thinks of the conversation.

The Court: I think that he can give the conversation. That was the original question. I sustained the objection.

Mr. Neblett: I don't have any objection to the conversation, actually what was said, but as to whom he referred to [23] is a different matter.

Q. (By Mr. Jensen): State what occurred during the telephone conversation at that time.

(Testimony of Albert Fletcher.)

A. At that time I said, "The Old Man gave you the number?"

He says, "Yes," he said, "you wanted to see me?"

I said, "Yes, I would like to see you."

He said, "Well, where are you? The 50s, the 60s or the 70s?"

I said, "In the 50s."

He said, "Well, I am fixing to leave home and you can meet me in about 15 minutes at 58th and Hoover."

Q. Was anything further said at that time?

A. Yes. I told him that I wanted to get two ounces of stuff, and he told me to meet him at 58th and Hoover.

Q. Was anything said about price?

A. I don't recall on that occasion at that time.

Q. Did you leave after this telephone conversation? A. I did.

Q. Did you leave by yourself? A. I did.

Q. Did you have your car there?

A. I did.

Q. Would you tell us where you went and how you got [24] there?

A. When I left the house I was furnished with \$860 worth of advance money from Mr. Richards. I was searched before I got in my car and my car also was searched. And I proceeded to meet Rayson at 58th and Hoover.

The Court: What do you mean searched?

(Testimony of Albert Fletcher.)

The Witness: I was searched in person. I was going to——

The Court: Who searched you?

The Witness: The agents, Mr. Richards and Deputy Farrington.

The Court: Then they went out and searched the car?

The Witness: My car was searched.

The Court: By whom?

The Witness: Mr. Richards and Deputy Farrington.

The Court: All right.

Mr. Neblett: Pardon me. How much money was that he gave him?

Mr. Jensen: The witness testified \$860.

Q. Did you park the car in the vicinity of 58th and Hoover? A. At 58th and Hoover.

Q. Did you observe while you were driving down there whether or not you were followed or accompanied by anyone else? [25] A. I was.

Q. By whom?

A. Agent Richards and Deputy Farrington.

Q. Were they in another car?

A. They was.

Q. After you arrived at 58th and Hoover, did you have occasion to see the defendant Rayson?

A. I did.

Q. How did he approach?

A. I was parked on the northeast side of Hoover and he approached me coming from south to north

(Testimony of Albert Fletcher.)

and pulled about 30 feet ahead of me toward the curbing and I pulled up behind him.

Then he started his car off again and made a right turn on 57th Street and proceeded halfway in the block.

Q. Did he stop again?

A. He stopped and I also stopped.

Q. Did you have a conversation with Mr. Rayson at that time? A. I did.

Q. Where exactly did it occur?

A. In my car. He got out of his car and came to my car and got in my car.

Q. Was there anyone else present during that conversation? [26] A. No, there wasn't.

Q. Was there anyone with Mr. Rayson at the time he drove up in his car? A. There wasn't.

Q. Would you state approximately what time was this when you met him?

A. Approximately about——(pause)

Q. Was this right after the telephone conversation?

A. It was about 15 minutes after the telephone conversation; about 10:45.

Q. You say about 10:45? A. 10:45.

The Court: A.m.?

The Witness: A.m.

Q. (By Mr. Jensen): Would you state what the substance or effect of that conversation was?

A. Well, I told him that I had spoke to Mr. Kelley and that I wanted, I told him that I wanted

(Testimony of Albert Fletcher.)

to get a couple of ounces of stuff, and that I would like to get a better deal than the deal that I had previously been getting before.

He told me that I would have to buy more than two ounces, and I could get it for \$275, but I would have to pay \$300 an ounce, \$350 an ounce for from one to two ounces.

Q. Was there any other conversation, any additional [27] conversation?

A. Yes, he told me to go back where I was waiting at the telephone, where he had contacted me, and that he would contact me in about an hour.

Q. After that conversation did you return to Mr. Richards' home? A. I did.

Q. Did you remain there for some time?

A. I did.

Q. Did a telephone call come in while you were waiting there? A. It did.

Q. Do you recall the approximate time of this telephone call?

A. Around noon, just about noon.

Q. Who answered the phone? A. I did.

Q. Did you recognize the voice that you heard on the phone at that time? A. I did.

Q. Would you state whose voice it was?

A. Rayson's.

Q. Was there anyone else present at the time of that conversation? A. It was. [28]

Q. Will you state who else was present?

A. Mr. Richards and Deputy Farrington.

(Testimony of Albert Fletcher.)

Q. Did either Mr. Richards or Mr. Farrington listen to any part of this conversation?

A. Mr. Farrington did.

The Court: What do you mean by listened? You mean to say he listened to what you said or did they listen in on the telephone?

The Witness: He listened in on the telephone. I had the telephone up to my ear and he also listened in too. We had the phone fixed so both of us could listen.

The Court: On the same receiver?

The Witness: On the same receiver.

Q. (By Mr. Jensen): Would you state the substance and effect of the conversation that you had on the telephone at that time?

A. After the telephone call I answered the phone and Rayson told me that he couldn't, at that time he couldn't do anything. He couldn't get me anything right then because the party he had to see was not at home, and that it would have to be about 5:00 o'clock that evening.

I told him that I couldn't make it at 5:00 o'clock because I had someone to pick up at 5:30, and he told me to wait a while. He started to give me a number, and he called out the first five numbers but he didn't give me a prefix. [29] He told me to wait, that he would call me back in about five minutes.

Q. Was that the end of the conversation?

A. It was.

Q. Did you have another conversation on the

(Testimony of Albert Fletcher.)

telephone a little later? A. I did.

Q. About how much later?

A. About four or five minutes later.

Q. Did you answer that call?

A. I did.

Q. Did you recognize the voice of the person to whom you were talking? A. I did.

Q. Who was it, please?

A. Rayson.

Q. Would you state the substance of that conversation?

A. Well, he told me that that would be the earliest that he could take care of the business, and I told him that I wanted to do it, if he could I wanted him to do it before night because I didn't want to wait until night.

So he told me that he couldn't, and I also told him that I had this sum of money and I didn't like to carry it around, did he want to take the money at that time.

He told me yes, and we set a time of 6:30 that he would [30] call me at this number at 6:30 that night, and he told me to meet him this time in 15 minutes at 58th and Main.

The Court: Is this the 6:30 call you are talking about?

The Witness: No, this is on the same call.

Mr. Jensen: Let me clear that up, your Honor.

Q. As I understand it——

Mr. Neblett: May I inquire also, we are still talking about the 14th now?

(Testimony of Albert Fletcher.)

The Court: The 14th, as far as I know.

Mr. Jensen: That is correct. We are talking about a telephone conversation——

Q. Is this correct, Mr. Fletcher, you are now relating to us what was said in the telephone conversation that occurred a little after noon, just a few minutes after noon, on September 14th with the defendant Rayson, the second of two calls that came in very close together, is that correct?

A. That is correct.

Q. If I understand you correctly, you are stating that in this same conversation you were to meet him within 15 minutes or so at 58th and Main?

A. That is right.

Q. You were also to expect a telephone call at 6:30 p.m. in the evening?

A. That is right.

Q. And both items were brought out in the same telephone [31] conversation as being the one just after noon?

A. It was.

Q. Was there anything else said during that conversation?

A. It was.

Q. Can you tell us the balance of the conversation?

A. He also gave me a number to call him, and if he wouldn't be there to answer the phone, if anyone else would answer the phone, to tell him that White Mercury called.

Q. After that telephone conversation, did you leave Mr. Richards' home?

A. I did.

Q. Where did you go?

A. To 58th and Main.

(Testimony of Albert Fletcher.)

Q. Did you go in your automobile?

A. I did.

Q. Did you observe whether or not you were followed or accompanied? A. I did.

Q. Were you? A. I was.

Q. By whom?

A. Mr. Richards and Deputy Farrington.

Q. When you got down to 58th and Main, did you stop? A. I did. [32]

Q. Did you see Mr. Rayson?

A. No, I didn't.

Q. At the time of your stopping?

A. No.

Q. Did you see him subsequently?

A. I did.

Q. There at 58th and Main?

A. At 58th and Main.

Q. Did you have a conversation with him at that time? A. I did.

Q. Was there anyone else present during the conversation? A. It wasn't.

Q. Would you state what was said on that occasion? A. I gave him the money.

Q. How much money did you give him?

A. \$700.

Q. What was said?

A. He told me—he repeated again that the Old Man said that I could have the same deal that I once got before for the same price if I would buy over two ounces.

Q. Was anything else said?

(Testimony of Albert Fletcher.)

A. Yes, he also told me that when he got out of his car to come over to mine, that he had skinned the bulk off his knee. [33]

Q. Was there anything else in addition to that?

A. No, that was all.

Q. Did you then leave that area in your car?

A. I did.

Q. Where did you go at that time?

A. Back to Agent Richards' house.

Q. Now, prior to that meeting, had you been searched again as before? A. I had.

Q. Was your vehicle searched?

A. It was.

Q. Upon your return to Mr. Richards' house were you searched again? A. I wasn't.

Q. Did you have any money left?

A. I did.

Mr. Neblett: Your Honor please, that is incompetent, irrelevant and immaterial. We object to it on that ground.

The Court: The only problem here, the testimony was he was given \$860 and he paid out \$700. Objection overruled.

Q. (By Mr. Jensen): Did you have any money left in your possession? A. I did.

Q. How much did you have? A. \$160.

Q. Did you give that to someone?

A. I did.

Q. To whom? A. Agent Richards.

Q. Now calling your attention to later in the day on September 14th at approximately 6:30 p.m.

(Testimony of Albert Fletcher.)

in the evening, would you state where you were on that occasion or at that time?

A. At Mr. Richards' house.

Q. What time did you arrive there?

A. About 6:00 o'clock.

Q. Were there other people present at that time?

A. It was.

Q. Will you state who else was present?

A. Mr. Richards, Deputy Farrington and Deputy Stoups.

Q. How long did you remain there at Mr. Richards' house on this occasion?

A. Until approximately 6:30 when I received the call.

Q. A telephone call came in?

A. It did.

Q. About what time did that telephone call come in?

A. About 6:30.

Q. Did you answer the phone?

A. I did.

Q. Did you recognize the voice of the person speaking? [35]

A. I did.

Q. Will you state who that was?

A. Rayson.

Q. Would you tell us whether or not anyone listened in to that conversation?

A. Deputy Farrington did.

Q. Did Agent Richards listen in to any part of that conversation?

A. I can't recall.

Q. Would you give us the substance or effect of that conversation, please?

A. Rayson told me to go to Budlong and Slau-

(Testimony of Albert Fletcher.)

son, that there was an R and R sign by the tracks.

The Court: You say it was Budlong and Slauson?

The Witness: It was a railroad sign with RRs on it. And he told me to look at the base of this sign, that there was a bag with a bottle and on top of it this package, that I could pick it up.

Q. (By Mr. Jensen): Was there anything else said? A. No, it wasn't.

Q. After this telephone conversation, did you leave Mr. Richards' home? A. I did.

Q. Did anyone accompany you? [36]

A. Mr. Richards did.

Q. Whose car did you leave in?

A. Mine.

Q. Who drove? A. I did.

Q. Where did Mr. Richards sit?

A. On the side of me.

Q. In the front seat? A. Front seat.

Q. Where did you drive him?

A. To Budlong and Slauson, which has a sign——

Q. Wait a minute. Which street were you actually on? A. 56th.

Q. What street is the sign actually on?

A. On Budlong.

Q. Did you drive along Budlong?

A. I did.

Q. Did you observe a railroad sign?

A. I did.

Q. Where was it in relation to this street?

(Testimony of Albert Fletcher.)

A. (Pause.)

Q. I am sorry. I will rephrase it. Will you tell us where this sign was?

A. At Budlong right near the tracks.

Q. A little more specifically, where was it from the [37] road you were driving on?

A. From Slauson.

Q. You misunderstand me, Mr. Fletcher. I want a little better physical description of the scene there that you saw at Budlong where you saw the RR sign. Will you state to the court how far the sign was away from the road?

A. Right on the side.

Q. How far? What is your estimate of the distance?

A. About two feet.

Q. Did you observe anything there at the side?

A. I pulled to the side and Mr. Richards got out of the car and picked up the package.

Q. Did you see——

Mr. Neblett: If you will excuse me just a minute. Your Honor please, we move that that “picked up the package”—he may have picked up a package but I think he is referring to the package now which is probably a conclusion.

The Court: It may go out.

Q. (By Mr. Jensen): Did you observe what Mr. Richards did when he got out of the car?

A. I did.

Q. What did he do?

A. He stooped down and picked up a package from the [38] side of the sign.

(Testimony of Albert Fletcher.)

Q. You say "a package." What color was it?

A. Brown paper bag.

Q. Did you observe a bottle or anything in the vicinity of the package? A. I did.

Q. Where was it?

A. The bottle was on top of the package.

Q. Did Mr. Richards get back in your car?

A. He did.

Q. Where did you go after that?

A. Back to his house.

Q. Back to Mr. Richards' house?

A. Back to Mr. Richards' house.

Q. Did you have any subsequent conversations with the defendant Kelley after September 14th, 1955? A. I did.

Q. I call your attention to approximately September 22, 1955, and I will ask you whether or not you had a conversation with the defendant Kelley at that time. A. I did.

Q. Would you state where that conversation took place?

A. In front of the La Jolla Cleaners.

Q. That is the same La Jolla Cleaners that you spoke about before? [39]

A. That is right.

Q. Approximately what time of day did that conversation take place?

A. I think it was around—it was in midafternoon.

Q. Your memory is that it was in midafternoon?

A. It was.

(Testimony of Albert Fletcher.)

Q. Was there anyone else present at that conversation? A. It wasn't.

Q. Where was Mr. Kelley at that time?

A. He was sweeping the side of the street.

Q. In front of the La Jolla Cleaners?

A. Yes.

Q. Will you state to us what you said on that occasion?

Mr. Neblett: Now, if your Honor please; we object to that on the ground it is incompetent, irrelevant and immaterial.

I assume that counsel is trying to prove a conspiracy. The conspiracy is completely consummated by this time and declarations made after the conspiracy are inadmissible on the ground that they are hearsay and incompetent, irrelevant and immaterial.

Also if it is supposed to be offered for the purpose of proving the other two counts in the indictment, possession and transportation and sale, it is incompetent, irrelevant [40] and immaterial for those purposes for the same reasons I have stated.

The Court: Overruled.

Q. (By Mr. Jensen): Would you state what the substance and effect of the conversation was that you had with the defendant Kelley on the occasion of your seeing him on September 22, 1955, while he was sweeping the sidewalk in front of the La Jolla Cleaners?

A. We exchanged greetings again and I told Mr. Kelley that I had told Rayson to see if he could

(Testimony of Albert Fletcher.)

get a better deal from him for me, and I asked Mr. Kelley, had he talked to him.

He told me no, that he hadn't talked to him, and he also stated that Rayson had been trying to get in touch with me a previous time before that, and he had called this number and I wasn't there and I told him I was trying to get in touch with him.

Q. Were any further statements made relative to narcotics? A. It was.

Q. What were they?

A. I asked him, could he give me a better deal, and he told me that I would have to talk it over with Rayson.

Q. Was there anything else said?

A. Yes, he did say—I can't recall all that was said [41] in that conversation.

Q. Have you had any conversations or contacts with the defendant Kelley since that time?

A. Had I had any?

Q. Since that time.

A. No, I haven't.

Q. From September 22, 1955, or thereafter did you have an occasion to get in touch with the defendant Rayson? A. I did.

Q. Or did he get in touch with you, either one—pardon me.

A. He got in touch with me the next day, the following day.

Q. That would be September 23rd?

A. I think it was.

Q. How did he get in touch with you?

(Testimony of Albert Fletcher.)

A. He called Agent Richards' house.

Q. Do you recall approximately what time that telephone call came in?

A. No, I can't recall that at this moment, but it was in the morning.

Q. Were there other people present there besides yourself? A. It was.

Q. Would you state who they were? [42]

A. Agent Richards and Sergeant Landry and Deputy Farrington and Deputy Stoups.

Q. Did you answer the phone when that call came in? A. I did.

Q. Did you recognize the voice of the person to whom you spoke on the phone at that time?

A. I did.

Q. Will you state who it was?

A. Rayson.

Q. Would you state what was said during that conversation?

Mr. Neblett: If your Honor please, we still object to this on the ground that it is incompetent, irrelevant and immaterial, because he is trying to lay a state of facts for *res gestae* or something on an offense which took place after the date of the offense charged in the indictment.

The Court: Overruled.

Q. (By Mr. Jensen): Would you give us the substance of that conversation?

A. When he called I told him that I would like to get the same deal that I had got from him before,

(Testimony of Albert Fletcher.)

and we made arrangements to meet around 1:00 p.m. that day at 49th and Hoover.

Mr. Neblett: Your Honor please, we move that the answer [43] beginning with the arrangements go out on the ground it is a conclusion.

The Court: How can the acts of the defendant after the 22nd have any materiality upon this charge? What is your theory?

Mr. Jensen: We intend to show this is an additional overt act as a part of the conspiracy which we charge in Count 1 of the indictment, your Honor.

The Court: Mr. Neblett, supposing the Government alleges a conspiracy and sets forth three or four overt acts. Are they limited to those overt acts?

Mr. Jensen: No, your Honor. They may either show more or less, as I understand the law.

The Court: I am asking Mr. Neblett.

Mr. Jensen: Excuse me.

Mr. Neblett: Excuse me, your Honor. I didn't hear you.

The Court: Supposing they are alleging a conspiracy and they allege two or three overt acts. At the time of the trial and proof, are they limited to those overt acts or can they show additional overt acts?

Mr. Neblett: They may show additional overt acts, your Honor. That is the rule, as I understand it. But you can't show an overt act which has taken

(Testimony of Albert Fletcher.)

place subsequent to the conspiracy charged has been fully consummated. [44]

We didn't bring our brief up this morning, but we have cases right on the point on that score, that you cannot show anything that tends to be an overt act or tends to prove an overt act subsequent to the time of the consummation of the conspiracy.

Now according to this witness' testimony, this conspiracy was completely consummated, that is, the one charged in the indictment, when he and Mr. Richards went down to this railroad sign at Budlong and Slauson and picked up a bag, which I assume was the heroin he was talking about, contained the heroin he was talking about.

So this is all immaterial after the consummation of the conspiracy.

The Court: Supposing this is a continuing conspiracy? Supposing it is not just a conspiracy limited to that time, but it is a continuing conspiracy, that there was a conspiracy up until the time of the arrest?

Mr. Neblett: Well, if your Honor please, they would have to charge it in an indictment or they couldn't show it here.

Mr. Jensen: I think we have, your Honor.

The Court: They don't say a conspiracy for any definite length of time, do they?

Mr. Neblett: It is charged that the conspiracy was fully consummated on September 14, 1955, and there is nothing [45] charged in the indictment after that date.

(Testimony of Albert Fletcher.)

Mr. Jensen: I disagree with counsel in that. I don't think we are limited to September 14th.

The Court: Let's read the count. It states to and including October 6, 1955.

Mr. Neblett: I didn't notice that, your Honor.

The Court: The objection is overruled. Do you remember the question now?

Mr. Jensen: No, your Honor. I am afraid I am lost.

(The record referred to was read by the reporter as follows:)

("Q. Would you give us the substance of that conversation?

("A. When he called I told him that I would like to get the same deal that I had got from him before, and we made arrangements to meet around 1:00 p.m. that day at 49th and Hoover.'")

Q. (By Mr. Jensen): As I recall, you were relating the telephone conversation that you had with Rayson. A. It was.

Q. Would you give us all of that conversation, please?

A. We made arrangements to meet about 1:00 o'clock that day, and before I left, still at the house and before I left the house, I was given \$700 from Mr. Richards and—— [46]

Q. Wait a minute. Let us stay with the conversation a moment. Was that all the conversation that you had?

A. That was all the conversation I had.

(Testimony of Albert Fletcher.)

Q. Did you subsequently leave the house?

A. I did.

Q. Where did you go?

A. To 49th and Hoover.

Q. Did you see there either of the defendants at that time? A. I did.

Q. Who did you see? A. Rayson.

Q. Did you have a conversation with him at that time?

A. No. He was turning the corner at the time and my car was parked the opposite way from him, and he beckoned for me to start up my motor, and he made a turn behind me and I turned right on Hoover and proceeded for about a block, I made a left turn and he made a right turn also, and he went about two blocks and I didn't see him any more. We circled the block and I didn't see him any more until about a half hour or 45 minutes afterwards.

Q. When you saw him this half hour or 45 minutes later, did you stop and have a conversation?

A. I pulled up beside his car and I asked him what had [47] happened, and he told me that someone had beat him for the package where he had placed it.

Q. I am sorry. I didn't hear that.

A. Someone had stolen the package from where he had placed it, and that he would have to see me later that day.

Q. Was there anything further said?

A. No, there wasn't.

(Testimony of Albert Fletcher.)

Q. Did you have any occasion to see the defendant Kelley or the defendant Rayson after that time? A. I did.

Q. Which one did you see?

A. Rayson.

Q. When did you next see him?

A. I went over to his place of business.

Q. I am not asking you where. Will you give us an approximate time or date the next occasion you saw Rayson? Was it the same day?

A. That same day.

Q. Where was it that you saw him?

A. Over on Jefferson and Main.

Q. Did you have a conversation with him at that time? A. I did.

Q. Was there anyone else present at the conversation? A. There wasn't.

Q. What was said? [48]

A. I asked him, was he able to take care of me then. He told me no, that that was the last two that the Old Man had given him and he didn't have any more right then, that it would be about two or three more days.

Q. Was there any additional conversation?

A. There wasn't.

Q. Have you had any occasion since that time to see or talk to either of the defendants Kelley or Rayson? A. I did.

Q. When was that?

A. I can't recall the date, which date.

Mr. Jensen: May I have a moment, your Honor?

(Testimony of Albert Fletcher.)

(Conference between counsel.)

Mr. Jensen: Does your Honor expect to go on until 12:00 o'clock?

The Court: Yes.

Q. (By Mr. Jensen): Mr. Fletcher, going back in your testimony a little bit, I call your attention to the word that you used in these conversations of "stuff." Would you state whether or not that word has any particular meaning to you as you used it?

A. I do.

Q. What does it refer to? A. Heroin.

The Court: What do you call marihuana?

The Witness: Purr, various names.

The Court: What do you call opium?

The Witness: I never had any dealings with opium.

The Court: "Stuff" is heroin?

The Witness: The password, stuff.

The Court: It doesn't refer to opium, marihuana or any other drug?

The Witness: Not that I know of.

Q. (By Mr. Jensen): Prior to August of this year have you had any transactions with the defendant Kelley or the defendant Rayson?

A. I have.

Q. Would you state when those transactions occurred, as near as you can recall?

A. From the period of around October 1953.

Q. Let me put it this way to you, Mr. Fletcher: How many prior transactions have you had with

(Testimony of Albert Fletcher.)

the defendant Kelley or the defendant Rayson, approximately, your best memory?

Mr. Neblett: If your Honor please, to what transactions is the District Attorney referring?

The Court: I don't know what transactions he means.

Mr. Jensen: I will withdraw it and reframe it.

Q. Had you had any contacts with either the defendant Kelley or the defendant Rayson in which you offered to purchase narcotics from them prior to August 1955? A. I have.

Q. Would you state to us your best memory on how many occasions you contacted either or both of them, or they contacted you, relative to the sale of narcotics?

A. I couldn't count the times.

Q. Can you give us your best judgment? Were there two or three, four or five, or what?

Mr. Neblett: Your Honor please, we would like to have this divided as to which one he had his conversation with.

Q. (By Mr. Jensen): Let's take it with the defendant Kelley for a moment.

Prior to August——

The Court: May I ask this witness a question?

Mr. Jensen: Certainly.

The Court: Are you a user?

The Witness: No, I am not.

The Court: All right.

Q. (By Mr. Jensen): Prior to August of 1955, on how many occasions—if you don't recall the

(Testimony of Albert Fletcher.)

exact occasions give us your best memory on it—on how many occasions have you contacted the [49b] defendant Kelley relative to the purchase or sale of narcotics?

A. Two or three times.

Q. And would you state as to the best of your memory when those contacts occurred?

A. In 1953, around October, I had one conversation with the defendant Kelley.

Q. Were there any thereafter?

A. In 1954 I had maybe one or two.

Q. Now on these prior contacts, can you fix for us with any more certainty the time in '54 that you contacted Kelley?

A. About January 19th.

Q. You said there may have been one or two. Were they both in January or were they at a subsequent time?

A. At subsequent times.

Q. Taking the ones that occurred in October of 1953, do you recall where it was that you saw the defendant Kelley?

A. La Jolla Cleaners.

Q. Do you recall any of your conversation that you had with him at that time?

Mr. Neblett: Your Honor please, I don't know what the purpose of this is. I can't *devine* it myself. It seem to me it is all incompetent, irrelevant and immaterial. The defendants are not charged with any conspiracy, or maybe he [49c] is trying to show a defense to entrapment. We haven't

(Testimony of Albert Fletcher.)

brought that up yet, but I think it is a little premature at this time.

The Court: What is your theory here?

Mr. Jensen: I have two theories, if your Honor please. One is that I wish to show the pattern of those transactions for the purpose of showing that the defendant Kelley's actions were intentional and knowingly, that he knowingly entered into these later engagements that we have had testimony on in detail. In other words, his state of mind or his criminal intent.

Secondly, I think that your Honor can admit it on the basis of our having charged that this conspiracy to violate the laws of the United States commenced prior to the date of the commission of the first overt act.

The Court: You mean "prior" extends back over a couple of years?

Mr. Jensen: Well, it is the Government's theory, if your Honor please, that this was a continuing arrangement.

The Court: As I read the indictment, "prior" means a few days or maybe a week or two, maybe a month or so, but a couple of years seems like it is too far back, isn't it? You mean to say a continuing conspiracy here?

Mr. Jensen: I think, if your Honor please, that we can show anything within the statute of limitations with respect [49d] to that, if it is our theory that the conspiracy lasted that long.

But even if your Honor will not go along with

(Testimony of Albert Fletcher.)

us on that, I think that a prior transaction of almost identical circumstances can, in the court's sound discretion, be admitted to show the state of mind of the defendant who was engaged in it. In other words, whether or not he was acting knowingly and acting unlawfully.

The Court: Objection sustained.

Q. (By Mr. Jensen): You have used the phrase—and I quote you, Mr. Fletcher—"Old Man." Would you state to the court whether or not that is a nickname or a particular reference to—

Mr. Neblett: Your Honor please, we object to that as calling for a conclusion of the witness. He didn't say anything about the Old Man. That was said by Rayson, according to his testimony, that the Old Man was always referred to by Rayson, according to this witness' testimony. This witness hasn't ever called anybody the Old Man, and we object to it on that ground. It is calling for a conclusion of the witness and it is incompetent, irrelevant and immaterial in any event.

Mr. Jensen: I think the record actually shows that both Rayson and the witness used the term, but be that as it may I think I can show the reference that is associated in this [49e] man's mind with that term.

The Court: He just got through saying a moment ago, "The Old Man did so-and-so"; somebody was talking to him, "the Old Man did so-and-so."

Mr. Jensen: But, if your Honor please, I can clear the matter up. I will withdraw the question as

(Testimony of Albert Fletcher.)

such if you will give me an opportunity to, and without prejudice to my renewing it again.

The Court: Clear it up. Let's see who the Old Man is.

Q. (By Mr. Jensen): Is there anyone that you refer to as the Old Man? A. Yes.

Mr. Neblett: That is too general. I commanded at least 20,000 troops in my various positions in the Army and they all called me the Old Man, even though I was younger than most of them.

Mr. Jensen: I have to start somewhere, your Honor. I can narrow it down from there, I think.

The Court: Overruled.

Q. (By Mr. Jensen): Do you use the term "Old Man" to refer to anybody in particular, Mr. Fletcher? A. I do.

Q. To whom did you refer when you used that term? A. Mr. Kelley. [49f]

Mr. Neblett: Your Honor please, we move that that be stricken—maybe I will withdraw that.

The Court: When you say "Old Man," can't he say, "When I say 'Old Man' I mean Mr. Kelley?"

Mr. Neblett: I move that it be stricken out.

The Court: Denied.

Q. (By Mr. Jensen): Have you heard other people refer to Mr. Kelley as "Old Man," Mr. Fletcher? A. I have.

Q. Have you heard the defendant Rayson refer to Mr. Kelley as the Old Man?

A. I have.

(Testimony of Albert Fletcher.)

Q. Was the reference ever used in Mr. Kelley's presence? A. No, not that I know of.

Q. Now you have stated, as I recall, that you have had numerous conversations with the defendant Rayson. A. I have.

Q. During those conversations have you had occasion to refer to the defendant Kelley?

A. I have.

Q. What term was used as reference to Mr. Kelley during those conversations?

A. The Old Man. [49g]

Q. Do you use it in reference to anybody else, or have you, within the last year or two years?

A. I haven't.

Q. Do you know of anyone that Mr. Rayson uses it in reference to? A. I do.

Q. Who is that? A. Mr. Kelley.

Q. Mr. Fletcher, how long have you been in contact with people or yourself had contact with narcotics or the business of buying, selling and transporting narcotics? A. Since 1940.

Q. And you have prior convictions for possession of narcotics, have you not?

A. I have.

Q. Would you state when the first of those occurred? A. 1940.

Q. Where? A. In New Orleans.

Q. Was that in a State or United States court?

A. Federal.

Q. Have you had a subsequent conviction?

(Testimony of Albert Fletcher.)

A. I have.

Q. Where did that occur?

A. In Los Angeles. [49h]

Q. Approximately when? A. 1949.

Q. Was that in the State or United States court?

A. In State court.

Q. State of California court? A. Yes.

Q. Now during the years from now to 1940, have you generally referred to heroin as "stuff"?

A. I have.

Q. Have the other people that you have contacted or have contacted you in reference to narcotics or the sale of them referred to heroin as "stuff"? A. They have.

Q. Is that a generally accepted word for people that are engaged in this business, that is, "stuff" for heroin? A. That is one.

Q. It is one? A. That is one of them.

Q. Does it ever refer to anything else other than heroin?

A. I never used the term for anything else.

The Court: May I ask a question?

Mr. Jensen: Certainly.

The Court: You said a little while ago that you were not a user, and when you were convicted down in New Orleans in [49-I] 1940 you must have been a pusher, is that right?

The Witness: It was possession.

The Court: Well, for what purpose?

The Witness: I was—that is right—I was taking

(Testimony of Albert Fletcher.)

some narcotics out of a drug store. That is what I was convicted for.

The Court: That was your possession, was it?

The Witness: That was my possession.

The Court: You stole the narcotics?

The Witness: That is right.

The Court: Well, in Los Angeles in 1949, were you a pusher in 1949?

The Witness: I was.

The Court: That is all.

May I inquire, in 1949, this conviction, was this conviction for a felony in 1949?

Mr. Jensen: They were both felony convictions, as I understand it.

The Court: The reason I am asking, the State courts give 30, 60 or 90 days sometimes.

Mr. Jensen: My understanding, although I make this representation without having actually checked the record, is that they are felony convictions.

Mr. Neblett: May I interrupt at this time? It is probably out of order, but I have a certified copy of his conviction [49-J] here in the State court from the Los Angeles Superior Court, and he was sentenced to 1 to 14 years on a plea of guilty.

The Court: That must have been a felony.

The Witness: I was not on 1 to 14. I never have been sentenced to 1 to 14.

Mr. Jensen: He probably means serving it.

The Court: You may use that on cross examination.

Mr. Neblett: Very well. I thought I would in-

(Testimony of Albert Fletcher.)

interrupt while the court was asking the question.

The Court: I was wondering whether this offense in Los Angeles was in the nature of a violation of the Health and Safety Act, whether it was a misdemeanor or whether it was a felony. Evidently it was a felony. Evidently it was a felony.

Mr. Jensen: I don't believe I have any further questions, your Honor.

The Court: Well, it is nearly 12:00 o'clock and I suspect that we had better take a recess now rather than start your cross examination. I anticipate the cross examination may take some time.

Mr. Neblett: It will, your Honor.

The Court: Now do you think we are going to have any difficulty in finishing this case tomorrow?

Mr. Jensen: Well, your Honor, I have some corroborating [49-K] witnesses that I don't think will be overly long, and one expert. That is for myself. Of course I don't know about the cross examination, and I may have some redirect examination.

The Court: This is your case in chief?

Mr. Jensen: With the corroborating witnesses and the expert, that would be my case in chief; yes, your Honor.

The Court: I see no necessity of coming back at 1:30. We will now recess to 2:00 o'clock this afternoon.

(Whereupon, at 11:50 o'clock a.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [49-L]

November 29, 1955, 2:00 o'clock p.m.

The Court: You may proceed.

Mr. Jensen: If the court please, I have one or two questions I overlooked this morning, if I might have the witness a moment or two on direct examination.

The Court: All right.

NORMAN FLETCHER

the witness on the stand at the time of recess, having been previously duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Jensen): Mr. Fletcher, you understand you are still under oath and testifying in this case? A. Yes.

Q. I would like to call your attention again to the conversation that you have testified about which occurred on September 22, 1955, with the defendant Kelley, and ask you whether or not you discussed that with me a little at length during the lunch hour and whether or not you made a mistaken statement this morning about when that conversation occurred, as to the time of day.

A. I did. [50]

Q. Is your memory now clear in respect to when that conversation actually took place?

A. Yes.

Q. When was it?

(Testimony of Norman Fletcher.)

A. On the 22nd.

Q. And at what time of the day?

A. About 10:30.

Q. Is that in the morning?

A. In the morning.

Q. You have also testified that subsequent to that you had two meetings with the defendant Rayson, and I think you testified that was the following day. Are you still of that memory or do you wish to change your testimony?

A. I wish to change it.

Q. What is the fact about the subsequent two meetings with the defendant Rayson?

A. It was the same day, that evening.

The Court: That evening?

The Witness: Yes.

Q. (By Mr. Jensen): That is September 22, rather than the 23rd. A. That's right.

Q. That was still in the afternoon or evening of the 22nd? A. Yes. [51]

Q. I will ask you whether or not at either of those two meetings with the defendant Rayson you delivered to him any money. A. I did.

Q. And at which of those two meetings?

A. On the first one.

Q. How much money did you deliver to him?

A. \$700.

Q. Did you have any conversation in respect to that money at that time? A. I did.

Q. And what was that conversation?

A. He told me that someone had stole the pack-

(Testimony of Norman Fletcher.)

age and that he didn't have any more, that was all that the old man had given him, and that he would have to contact him, and that he would call me back in an hour.

The Court: Did you give him the \$700?

The Witness: I did.

The Court: Did you ever get it back?

The Witness: I did.

The Court: When did you get it back?

The Witness: I went to his place later on. After I did not receive a call in an hour, I went over to his place.

The Court: Was that on the same day?

The Witness: It was. [52]

The Court: The 23rd?

The Witness: The 22nd.

The Court: 22nd. All right.

Q. (By Mr. Jensen): This is the second time you had paid him \$700, is it not? Answer audibly so we can hear.

Mr. Neblett: Excuse me a minute. May I have counsel clarify what he means by the second time? Is this the same \$700 or another \$700?

Mr. Jensen: This is another \$700.

Q. You have testified, have you not, and it is a fact that you gave the defendant Rayson \$700 on September 14, is that correct? A. Right.

Q. You have already related the details of that?

A. I have.

Q. You are now stating to us on the afternoon

(Testimony of Norman Fletcher.)

of September 22 you gave him another \$700, is that correct? A. That's right.

Q. And that \$700 was returned to you?

A. That's right.

Q. Later that same day? A. It was.

Q. September 22? A. Yes.

Q. Upon the return of that money, did you have a conversation [53] with the defendant Rayson?

A. I did.

Q. What was said at that time?

A. He told me that he had contacted the old man and that was all he had and that maybe in a few days to contact him, that something might be happening.

Q. Is that all the conversation you had at that time? A. That's all I can remember.

Mr. Jensen: May I have this marked for identification?

The Court: It may be marked for identification.

The Clerk: Exhibit 1 for identification.

(The exhibit referred to was marked as Government's Exhibit No. 1 for identification.)

Q. (By Mr. Jensen): Mr. Fletcher, I show you what has been marked United States Exhibit 1, being a photograph, and ask you whether or not that scene is familiar to you.

A. It is.

Mr. Neblett: Your Honor please, we object to his testifying from a photograph which is not yet admitted in evidence.

(Testimony of Norman Fletcher.)

The Court: How can he get it admitted in evidence if it isn't identified?

Mr. Neblett: Well, that is true, your Honor, but what I mean is there is no information laid for its admission.

The Court: He hasn't offered it in evidence yet. They are trying to lay a foundation. I don't know whether they can [54] lay a foundation or not. Go ahead.

Q. (By Mr. Jensen): Would you state what that is a scene of, Mr. Fletcher?

A. Of Budlong and Slauson.

Q. Which *is* street is running through the photograph from the bottom of the picture up to the top, which street is that? A. Budlong.

Q. Would you tell us where, as you look into that picture, Slauson would be headed, down that road or behind you?

A. It would be ahead.

Q. I notice in the picture there is a R.R. sign. Will you state whether or not that is the R.R. sign where you stopped? A. It is.

Q. And is that where Mr. Richards picked up the package? A. It was.

Q. Would you say this is a fair representation of the scene as it existed at the time that you and Mr. Richards stopped there? A. I would.

Mr. Neblett: If your Honor please, I object to this as incompetent, irrelevant and immaterial, no foundation having been laid for its admission, and yet he is testifying to all [55] the facts shown on

(Testimony of Norman Fletcher.)

the photograph and the photograph has not been offered.

The Court: He is getting ready to offer it as soon as this witness says it is a fair representation.

Mr. Neblett: I understand, but what is happening is he is asking him what the photograph shows. Is it a fair representation? Is this the place where he picked up the heroin? He has already proved everything he wants. He may not even offer the photograph in evidence. If I were in his place, I wouldn't, if that is all in.

The Court: Then you can offer it, if you want. The objection is overruled.

Q. (By Mr. Jensen): Was your answer in the affirmative? A. Yes.

Mr. Jensen: Your Honor, we will offer United States Exhibit 1.

Mr. Neblett: We object on the ground no foundation has been laid for it. It hasn't been shown who took it or when it was taken. It may have been taken 10 years ago for all we know.

The Court: The question, Mr. Neblett, was, is this a fair representation of the corner at the time the heroin was picked up, or the package was picked up? I don't know whether it was heroin or not. We haven't got that far along. That is the only question. Is this a fair representation? [56]

Mr. Neblett: The situation at the present time is a photograph has been offered in evidence on behalf of the government. I am objecting on the

(Testimony of Norman Fletcher.)

ground there is no foundation for it irrespective of what the witness has testified to.

The Court: Overruled. It may be received in evidence.

The Clerk: Exhibit 1.

(The exhibit referred to was received in evidence and marked as Government's Exhibit No. 1.)

Mr. Jensen: You may have the witness.

The Court: Cross examine.

Mr. Neblett: If the court please, prior to examining this witness, if I may, I would ask the court's leave to make a motion to strike the testimony of this witness as to the conversations he had with Rayson on the telephone, at which, at each conversation at Mr. Richards' house Mr. Richards or Mr. Farrington were listening in, on the ground that that testimony violates the defendant's rights under Article IV and Article XIV of the Constitution of the United States.

The testimony we move to strike is that there were several conversations between this witness Fletcher and defendant Rayson at a number which he said he had given the defendant Rayson to call him, which number was the narcotics agent's home, Mr. Richards' home. There were several people present at the time the conversation was being held.

The theory upon which we make the motion is that it [57] is not admissible and can't be used to convict the defendant because it is an invasion of his right of privacy.

(Testimony of Norman Fletcher.)

The Court: Mr. Neblett, the testimony was that this witness was listening on the telephone, he had the receiver to his ear close enough for somebody else to hear, and two people heard. There was no tapping of the telephone line. There was no listening in surreptitiously. The two of them were standing there. I have been in a room when you could hear the parties talking over the telephone clear across the room. Does that come within the rule that has been played up so much recently relative to the invasion of personal rights, listening in on a telephone line?

Mr. Neblett: That's right, your Honor. It recently came under consideration in the Supreme Court of California in the Cahan case.

The Court: Well, you can't tap a telephone line, but there was no tapping here, was there?

Mr. Neblett: No, your Honor, there was no tapping.

The Court: Supposing the receiver had been placed on the table and there were four or five people sitting around the table. Is that an invasion——

Mr. Neblett: That is, according to one case we found, an opinion by Judge Learned Hand of the Second Circuit. Frankly, I did not think that was the rule myself until we commenced to look it up. I did not know it was the rule. We [58] didn't know what the evidence of the prosecution was going to be. We knew, of course, there would be tele-

(Testimony of Norman Fletcher.)

phone conversations. In the pretrial memorandum, let's call it, which the government served upon us, these telephone calls were mentioned.

The Court: Let's assume, Mr. Neblett, A and B are carrying on a telephone conversation. If C taps that line somewhere and listens in, of course, it is illegal.

Mr. Neblett: That is true, your Honor.

The Court: But A and B can testify to what the conversation was. Suppose C up here hears the conversation. C might not be able to testify to what he heard, but wouldn't A and B still be able to testify?

Mr. Neblett: That is what this case holds. Judge Hand holds the facts related by your Honor are in effect tapping. It was new law to me. I did not know it.

The Court: Let's see the case.

Mr. Neblett: The case is *United States vs. Polo-koff*. It is the Court of Appeals of the Second Circuit, decided June 10, 1940. I forget to get the citation of the case.

The Court: It is 112 Federal Reporter (2d) 888. Let's read this, Mr. Neblett. This was recorded upon a machine annexed to an extension of the same circuit.

Mr. Neblett: That is a recording, if your Honor will read on the following page. I assume there is no more difference [59] in listening than there is in putting a recording machine on and taking

(Testimony of Norman Fletcher.)

it off the machine. There are recording machines now where you can hold a receiver and hear the transmitter on the telephone, and you can pick up sounds we can't hear at all.

The Court: Well, now, Judge Hand says relative to the telephone conversation both must consent to the interception of any part of the talk. There is no interception in this case, is there? Where was the interception?

Mr. Neblett: The interception was by having Richards and Farrington listen in.

The Court: If there had been an extension and they had listened in on the extension, but Judge Hand says that the recording is an interception. I don't see where the interception is here. He held it to his ear and both of them could hear. What was the interception?

Mr. Neblett: I understood that case to hold if they heard it in any way, allowed anyone to hear it who was not an authorized person, who was not authorized by the sender, that that was an interception. I think that is what that case holds. That is the way I interpret it.

The Court: I will deny your motion and will read the case at my leisure and see what I can make out of it. I will have a chance to read it tonight before I go home. I will read it tonight at my leisure and find out. [60]

Mr. Jensen: May I make a statement at this time? I don't want any misapprehension about

(Testimony of Norman Fletcher.)

what occurred in this instance. As a matter of fact, these telephone conversations were in part recorded. That is not presently in evidence.

The Court: I can't rule on something not before the court. The only thing I know is what this witness has testified to, and he testified he held the receiver up to his ear. I am basing my opinion upon his testimony. If it appears later that there was an interception, I am going to reverse my ruling.

Mr. Jensen: In that event, your Honor, I would like you to permit me to make a short argument in respect to it, because I think you will find the Polokoff case, which you have in front of you, was substantially reversed in *Goldman vs. United States*, a Supreme Court decision, in 316 U.S. 129.

The Court: All right.

Mr. Jensen: There are two more recent cases.

The Court: If the Supreme Court has ruled, I don't want to go any further than the Supreme Court. If I can find a Supreme Court decision, the Circuit can't overrule it.

Mr. Jensen: There were only two other cases which are more recent in the Circuit. One says that listening on an extension is permissible and not illegal. I have those citations if the court would care to have them.

The Court: Is it going to be material here? Is there an [61] extension in this case?

Mr. Jensen: No, your Honor.

(Testimony of Norman Fletcher.)

The Court: All right. I will read these two cases. All right, Mr. Neblett, you can cross examine.

Cross Examination

Q. (By Mr. Neblett): Mr. Fletcher, what business or occupation are you in? A. Not any.

The Court: Speak up, please.

The Witness: Not any now.

Q. (By Mr. Neblett): How old are you, Mr. Fletcher? A. 35.

Q. How long have you lived in Los Angeles?

A. Since 1949.

Q. Did I understand you to say this morning that you had been convicted of a felony in Louisiana? A. I did.

Q. In the federal court? A. Yes.

Q. That was under the Harrison Narcotics Act?

A. Yes.

Q. Did you serve a term in the penitentiary?

A. I did. [62]

Q. Weren't you convicted of another felony in Louisiana at a subsequent date to the first one you testified to, say in May 1942, of receiving stolen property? A. I was.

Q. That was in the state court of Louisiana, wasn't it?

A. I was granted a full pardon and citizenship restored.

Q. Did you serve a term in the penitentiary for that?

(Testimony of Norman Fletcher.)

A. I did serve a part of a term and was granted a pardon and full citizenship restored.

Q. You were convicted of a felony in Los Angeles and sentence was rendered against you March 20, 1950, isn't that right? A. That's right.

Q. That was for violation of Section 1150 of the Health and Safety Code, possession of narcotics?

A. It was.

Q. Were you convicted of a felony?

A. Yes, sir.

Q. Did you serve a term for that?

A. I did.

Q. How long? A. Three years.

Q. Where were you in prison?

A. Folsom. [63]

The Court: When did you get out?

The Witness: 1953.

Q. (By Mr. Neblett): Do you remember the date you got out in 1953? A. April 6.

Q. When? A. April 6.

Q. 1953. Were you let out on parole?

A. I was.

Q. Do you know what year your parole expires?

Mr. Jensen: I am going to object to this, your Honor. I don't think beyond the fact of conviction of a felony, that it has any materiality.

The Court: What is the purpose?

Mr. Neblett: Your Honor, I will withdraw that. I think the objection is well taken. I will withdraw it.

(Testimony of Norman Fletcher.)

Q. How long have you known the defendant Rayson? A. Since 1953.

Q. Do you remember the circumstances under which you met him?

A. I can recall meeting him in 1953, but at a later date—from seeing him, just seeing him around, and at a later date I was introduced to him.

Q. Was he introduced to you by your wife?

A. I don't recall. [64]

Q. How long have you known the defendant Kelley? A. 1953.

Q. What were the circumstances under which you met the defendant Kelley?

A. Under a narcotics transaction.

Q. When was that? A. In 1953.

Q. Do you remember the time in 1953?

A. It was the latter part of the year. I just can't recall when it was. It was the latter part of the year.

Q. Were you dealing in narcotics in 1953?

A. I was.

The Court: In other words, you were out of Folsom in 1953 and you immediately started the narcotics business?

The Witness: Yes, sir.

Q. (By Mr. Neblett): You testified this morning that you went to see Kelley some time in August 1953, isn't that so? I mean 1955.

A. I did.

Q. Do you remember the date?

(Testimony of Norman Fletcher.)

A. On the 22nd of August.

Q. What?

A. I think it was the 22nd of August.

Q. How did you happen to go down to see him? Did he call you or did you call him or did you make an appointment [65] of any sort?

A. I went down and seen him in his place of business.

Q. What was the purpose of your going there?

A. To obtain some narcotics.

The Court: Just a minute. May I ask a question?

Mr. Neblett: Yes, your Honor.

The Court: You say your purpose was to go down to obtain narcotics. For the use of the government or for your own use?

The Witness: For the use of the government.

The Court: All right.

Q. (By Mr. Neblett): Were you sent there by anyone? A. I was.

Q. Who sent you? A. The officers.

Q. Which officers?

A. Well, it was the crew of them.

Q. Don't you know any of them?

A. I know them by name.

Q. Well, who were the ones?

A. Agent Richards, Sergeant Landry, Deputy Farrington, and Deputy Stoups.

Q. How did this question come up about your going to see Kelley?

A. I had had previous dealings with Mr. Kelley.

(Testimony of Norman Fletcher.)

Q. Go ahead. How did it come up with the officers? The officers instructed you to go to see Kelley, is that right? A. Yes.

Q. How did that come up between you and the officers? Did you tell the officers something, or did the officers tell you something, or what?

A. I promised to cooperate with the officers.

The Court: May I break in and ask a question?

Mr. Neblett: Any time you like, just go right ahead. I will suspend.

The Court: You say you met Kelley in 1953?

The Witness: That's right.

The Court: Then you say you went to see him in 1955. Now, between 1953 and 1955, had you had any other transactions with Kelley? Had you kept up with him?

The Witness: Yes, your Honor.

The Court: You knew him all this period, did you?

The Witness: I knew him, your Honor.

The Court: All right.

Q. (By Mr. Neblett): What was said by the officers and by you at the time that they told you to go to see Kelley in 1955?

Mr. Jensen: I am going to object to this, your Honor. We have no time, no people present, or anything else with respect to any conversation he is asking now. I don't think we can go at it in that fashion. It is too broad and too nebulous.

The Court: Read the question.

(Question read.)

(Testimony of Norman Fletcher.)

The Court: Maybe you better lay a foundation.

Q. (By Mr. Neblett): Where did this conversation take place between you and the officers in which you discussed Kelley?

A. Agent Richards' house.

Q. Where?

A. Agent Richards' house.

The Court: You certainly can talk up better than that. You ought to be able to make a man hear across the room.

The Witness: Agent Richards' house.

Q. (By Mr. Neblett): What were you doing at Mr. Richards' house?

A. Well, I went by there. I was cooperating with the officers.

Q. How did you come to cooperate with the government? What arrangement or agreement did you have with the government to cooperate?

A. I was arrested by the federal agent.

Q. When? A. In February. [68]

Q. Of what year? A. 1955.

Q. Arrested for what? A. Narcotics.

Q. Were you indicted or an information filed against you in the federal court?

A. I don't know.

Q. Were you brought before a commissioner and your bond fixed, or anything of that sort?

A. I was.

Q. Have you ever been brought on for trial on that? A. I haven't.

Q. You were arrested in February of 1955 upon

(Testimony of Norman Fletcher.)

a narcotics charge. Was it possession, sale, or what?

A. Possession.

Q. You showed up at Mr. Richards' office on a certain date. Do you remember when that was?

A. I showed up in Mr. Richards' house on numerous occasions.

Q. When was it?

A. I just showed up there on numerous occasions.

Q. What was the first one you were there?

A. I couldn't just recall the first one.

Q. Did Mr. Richards ask you to come?

A. Yes. [69]

Q. You are employed by the federal government as an undercover agent, aren't you?

A. Since October.

Q. Of what year? A. This year.

Q. October this year? A. October.

Q. Weren't you employed by the government as an agent on August 22, 1955?

A. I was cooperating with the officers.

Q. What do you mean by cooperating? I don't quite understand what you mean by cooperating. You cooperated to the extent that they gave you \$860, is that right? A. That's right.

The Court: Just a minute, Mr. Neblett. Let me understand this. There must have been some sort of understanding or a deal made between you and the officers of the government. What was it?

The Witness: It wasn't any deal. At the time of my arrest?

(Testimony of Norman Fletcher.)

The Court: You were arrested. You were picked up?

The Witness: Yes, sir.

The Court: You were brought in before a commissioner?

The Witness: I was.

The Court: What happened? You weren't prosecuted? [70]

The Witness: No. I promised to cooperate with the officers in apprehending the bigger peddlers, narcotics peddlers.

The Court: Did they promise not to prosecute?

The Witness: No, they did not. They pointed out that it would be pointed out to the prosecuting attorney and the judge.

The Court: All right.

Q. (By Mr. Neblett): You say you went to Mr. Richards' house numerous times after your arrest in February 1954, and prior to the time that you saw Kelley on August 22, 1955.

A. That's right.

Mr. Jensen: I object to that. I think counsel inadvertently made a mistake in his date. He said February 1954.

Mr. Neblett: I should have said 1955. I accept the correction. February 1955 and August 22 of the same year.

Q. Do you understand the question now? You went there on numerous occasions.

A. I went there.

(Testimony of Norman Fletcher.)

Q. Do you know on how many occasions you went to Mr. Richards' house?

A. No, because I was cooperating with them. I would see them practically every day, I would be with them.

Q. Tell us a little more about what you mean by cooperating? What are you supposed to do to cooperate? That covers a lot of things. I don't quite understand you.

A. I stated to help apprehend bigger narcotics.

Q. To help do what?

A. To help apprehend bigger narcotic peddlers.

Q. What were you supposed to do to help?

A. Give the information or make a buy from the individual in their presence.

Q. At these numerous meetings with Mr. Richards at his house—that is the same house you testified to where the telephone call was received this morning, is that right? A. That's right.

Q. At those conversations who was present besides Mr. Richards? Let's take the first one.

A. Deputy Farrington.

Q. Anyone else?

A. I don't recall, because we had had a meeting before that and all of the officers was together.

Q. Where was this meeting held prior to the one you had at Mr. Richards' house?

A. It was at Mr. Richards' house about 7:30 that morning.

Q. You said you had had a meeting before that. Was that in Mr. Richards' house, too?

(Testimony of Norman Fletcher.)

A. At that time.

Q. That same day?

A. There was more officers at that time.

Q. How did you get down to Mr. Richards' house? Did [72] someone ask you?

A. It was a pre-arrangement from the day before when I went down to see Mr. Kelley.

Q. What was the pre-arrangement made the day before?

A. Mr. Kelley told me that he would have Rayson call me.

Q. No, no. I am talking now about the arrangement you had with the government and the officers to look for narcotic offenders, or whatever you were supposed to do. I am not talking about the conversation of August 22. You said you went to Mr. Richards' house many times after February 1954.

A. Yes.

Q. After you were picked up on a narcotics charge, possession.

A. That's right.

Q. When was the first of those times that you went to Mr. Richards' house after February 1954?

A. I couldn't recall.

Mr. Jensen: I object again. I think we are still having trouble with the date. The record shows he says 1955.

Mr. Neblett: 1955. I am sorry, Mr. Jensen. I apologize. 1955.

Q. Do you remember the first date you went after February 1955?

A. No, I don't. [73]

(Testimony of Norman Fletcher.)

Q. Approximately when?

A. Oh, maybe a week, two weeks after.

Q. How did you happen to go down there? Who asked you to come?

A. As I stated before, I was with the officers, cooperating with the officers.

Q. I know, but somebody must have said something to you, to meet him at Mr. Richards' house. Did someone do that, or did you just come down there because you knew where Mr. Richards lived?

A. As I stated, I was cooperating with the officers.

Q. Will you answer the question? Who asked you to go to Mr. Richards' house? Leave out the word cooperate.

A. Mr. Richards.

Q. What?

A. Mr. Richards.

Q. What did he say?

A. He told me to meet him over at his house.

Q. Did he tell you what he wanted you to come for?

A. No. I knew what he wanted me to come for, because I was with them all the time. I am telling you I was with them practically every day since the arrest.

The Court: Let's go back. You were arrested and you were brought in before the United States Commissioner. Were you placed under bond? Just answer that yes or no. [74]

The Witness: No, I was not.

The Court: How were you released? On your own recognizance?

(Testimony of Norman Fletcher.)

The Witness: On my own recognizance.

The Court: Then you immediately started to cooperate, is that right?

The Witness: That's right.

Q. (By Mr. Neblett): What were you to get for cooperating?

A. I was not promised anything.

Q. When did the name of Kelley first come into the conversation between you and the officers?

A. I can't recall.

Q. Did the name of Kelley come up before you went to see Kelley on August 22, 1955?

A. It was.

Q. How did it come up and where?

A. From me.

Q. Where? Where was it?

A. With Mr. Richards. I don't know if it was in his house or in his car riding in it, or what.

Q. What did you say about Kelley?

A. To the officers I stated I had previous dealings with Mr. Kelley and Rayson.

The Court: Had previous dealings with Kelley and what? [75]

The Witness: And Rayson.

Q. (By Mr. Neblett): At that time, did you make arrangements with the officers or was something said about trying to buy some narcotics from Kelley and Rayson in order that they might be caught? Was something said about that?

A. May I ask the question again, please?

(Testimony of Norman Fletcher.)

Q. Was something said at the time Kelley's name came up? Who was present at that time?

A. The whole crew, Richards, Sergeant Landry and Deputy Stoups.

Q. That was the first time you had ever brought Kelley's name up, before these gentlemen I am talking about? A. It was.

Q. Was that the first time you had ever heard Kelley's name mentioned in their presence?

A. It was.

Q. What did you say? You brought the name up. Just what did you say to this whole crew that you referred to a while ago?

A. I told them I could, that I had previously, I explained I had previously dealt with Mr. Kelley and Rayson, and that I could again.

Q. And you could buy from him again?

A. I could buy from him again.

Q. What was said? What was done for you to make a purchase? Was anything said about how you would go about making the purchase?

A. I don't recall.

Q. You got some instructions from the officers, didn't you? A. I did.

Q. What were those instructions?

A. I went—after I told them that I could buy some—make the purchase, they instructed me to go in, and I went on and talked to Mr. Kelley.

Q. Was this conversation held at Mr. Richards' house? A. It was.

Q. That was the first time Kelley's name ever

(Testimony of Norman Fletcher.)

came into the conversation between you and these officers, was it? A. No, it was not.

Q. When was the first time?

A. I can't recall, because I was giving them information all along.

Q. Had you been talking to them about Kelley right along?

A. Yes, I had been talking to them.

Q. Now, on this time, on August 22 or just prior to August 22, that you were with all of the officers that you have mentioned, the officers gave you some instructions, did they not, as to how to approach Kelley? [77]

A. No, no instructions. They did not give me any instructions.

Q. Something must have been said. You wound up at Kelley's La Jolla Cleaning Shop, didn't you?

A. That's right.

Q. Did you just go over there by telepathy? How did you happen to get over there?

A. I drove over there.

Q. I know, but did you have any pre-arranged plan or statements or anything from these officers before you left? A. Yes, we did.

Q. The officers followed you over there.

A. That's right.

Q. What did you say before you went over there? What did Mr. Richards, Mr. Farrington, and the other officers say to you, or any of them?

A. When I first brought up that I could make this purchase from Mr. Kelley and Rayson, I think

(Testimony of Norman Fletcher.)

it was called to the attention of the head of the narcotics supervisor.

Q. Who was that? Mr. Davis?

A. Mr. Davis.

Q. And then what?

A. And the permission was given for me to make the transaction, to make the deal.

Q. Who? [78]

A. Permission was given for me to make the buy.

Q. I know. Something must have been said, though. They don't just make a provision for you to buy. Let me ask you this question. Didn't you say to the officers, "I can catch Kelley with narcotics if you give me some money"? Did you say something like that? A. No, I didn't.

Q. How did you happen to bring up the question of money then?

A. That is the only way I could obtain it, was by some money, some narcotic funds.

Q. Did you expect Kelley to give it to you?

A. No, I didn't.

Q. What kind of plan did you make for the money? A. With the officers.

Q. What did the officers say when you asked for some money?

A. They just gave me the money and told me that they had received permission from San Francisco for me to make the purchase.

Q. Then you didn't have any conversation, as I

(Testimony of Norman Fletcher.)

understand it. They just handed you \$700 and you walked up to Kelley's shop, is that right?

A. I wasn't given the money when I went to Mr. Kelley's.

Q. I would like for you to tell me, if you could, just [79] what conversation you had with the officers and the officers had with you, Mr. Fletcher, just prior to the time that you went to see Kelley on August 22.

A. I can't recall the conversation.

Q. You went to see Kelley on August 22, did you not?

A. I did.

Q. At his cleaning shop on East Sixth Street called the La Jolla.

A. That's right.

Q. Do you remember the address of the shop?

A. No, I don't.

Q. Had you ever been there before?

A. I had.

Q. You were followed by the officers. You drove up there from Mr. Richards' house, did you?

A. Yes, sir.

Q. Where is Mr. Richards' house?

A. On 56th Street.

Q. 56th and what?

A. It is in the 1300s. I don't know exactly. It is in the 1300 block west 56th Street.

Q. You made arrangements with the officers to follow you when you went to Kelley's place?

A. Yes.

Q. What did you say in making the arrangements? Did [80] you say, "You follow me now and

(Testimony of Norman Fletcher.)

I will go on up to Kelley's place, go in there and make the arrangements for the stuff, and then I will come out"? Was there something of that sort? Did you say something of that sort?

A. No, sir, I did not.

Q. What did you say?

A. I was going over to talk to Mr. Kelley about some narcotics.

Q. Did you tell the officers that? A. Yes.

Q. You told them you were going to talk to Mr. Kelley about the stuff. Then what did the officers say? Did they just keep mum, or did they say something? A. No.

Q. What? A. They didn't keep mum.

Q. What did they say?

A. "All right." Permission was given.

Q. Did you ask them to follow you, or did they say they were going to follow you?

A. They said they were going to follow me.

Q. How many? Five?

A. I think there was two cars—there was three in two cars.

Q. You were driving what sort of a car? [81]

A. '55 Mercury.

The Court: Is that your car?

The Witness: Yes, sir.

The Court: And you haven't had any job, you said a little while ago, you didn't do anything?

The Witness: That was before I got apprehended for narcotics.

(Testimony of Norman Fletcher.)

The Court: Did you make enough money working for the government to buy a Mercury?

The Witness: I had this car.

The Court: You what?

The Witness: I had this car, and that was right after I was apprehended for selling narcotics.

The Court: You got out of prison in 1953. When did you buy the car?

The Witness: In 1955.

The Court: You said you didn't have a job, didn't do anything.

The Witness: The car I was driving was not mine, the 1955. The car I had was seized by the federal government.

The Court: This 1955 car, then, was not yours?

The Witness: It was not.

The Court: To whom did it belong?

The Witness: My girl friend.

Q. (By Mr. Neblett): You are married, aren't you? [82] A. No, I am not.

Q. You have been married, haven't you?

A. No, I haven't.

Q. Did you pay for this car that your girl friend has?

A. No. I guess she paid for it. It was her car.

Q. Is it registered in her name? A. It is.

Q. Do you drive it all the time?

A. No, I don't.

Q. How much do you use it?

A. At that time I was using it only every day,

(Testimony of Norman Fletcher.)

or whenever I wanted it, because she was working.

Q. Where is the car now?

Mr. Jensen: I am going to object to this, your Honor, as being incompetent, irrelevant and immaterial.

The Court: I don't know. It might go to the credibility of the witness, because he has testified he drove down in his car. You know, we have got a witness here who evidently is the government's main witness, and probably the question is going to be the credibility of the witness.

Mr. Jensen: No question about that, your Honor. I don't mind any question that goes to the credibility, but we have explored the business of the car quite a bit now.

The Court: Overruled.

Mr. Neblett: Read the question, please. [83]

(Question read.)

The Witness: I think she have it now. At that time I was staying with her. Now I don't stay with her.

Q. (By Mr. Neblett): You are not staying with her any more? A. No, I am not.

Q. Has she taken the car back from you?

A. She did.

Q. How long ago?

Mr. Jensen: I am going to renew my objection, your Honor. I think we are getting pretty far afield.

The Court: I think I will sustain the objection now. He has lost the car now, or the girl friend.

(Testimony of Norman Fletcher.)

Mr. Neblett: Very well, your Honor.

Q. On August 22, you left Mr. Richards' house in what you said was your car, and what color Mercury was it? A. White Mercury.

Q. 1955 model? A. Yes.

Q. And these officers drove behind you in two cars, is that right? A. That's right.

Q. How far were they behind you?

A. Right behind me. I was driving—I was driving so that they would stay behind me. [84]

Q. When you pulled up in front of the La Jolla cleaning establishment—and that is run by Mr. Kelley, isn't it? A. Yes.

Q. You know he runs a pressing and cleaning shop, do you not? A. Yes.

Q. You also know he runs a cafe in that neighborhood, too, do you?

A. No, I don't know that.

Q. Haven't you been in the cafe numerous times? A. I have.

Q. Haven't you seen Kelley in there?

A. I have.

Q. You have seen him in there numerous times, haven't you? A. Yes.

Q. It was in the cafe where you first saw him, isn't it? A. It is.

Q. You said you had narcotics transactions with Kelley going back to 1953, shortly after you were out of Folsom Penitentiary. How did that come about that you had transactions with him in 1953? Can you tell us the circumstances?

(Testimony of Norman Fletcher.)

A. I can.

Q. What are they? [85]

A. I was introduced to Mr. Kelley by a lady that was working at the La Jolla, I think it is the La Jolla Cafe.

Q. Was that a friend of yours?

A. It was.

Q. Is that the girl friend you were talking about? A. No, it is not.

Q. Had you known her for some time?

A. We were all living at the same house together.

Q. When? A. In 1953.

Q. Going back to the La Jolla cleaning shop now, you pulled up, and where did you park?

A. Just about the La Jolla Cleaners.

Q. On the same side of the street?

A. Yes.

Q. You hadn't given Kelley any notice that you were coming or anything? A. I had not.

Q. You knew where the La Jolla cleaning shop was and you knew the telephone number, because you could look it up in the book? You knew it was in the book, didn't you?

A. I never did call the La Jolla Cleaners.

Q. Never called him on the telephone at all at any time? A. I never have. [86]

Q. But you knew the name of the cleaning shop, La Jolla, you knew that was the name of it?

A. I had met Mr. Kelley before.

(Testimony of Norman Fletcher.)

Q. I say you knew that was the name, didn't you? A. Yes.

Q. Where did the officers park, if you know, or did they park?

A. At Towne and Sixth Street.

Q. At what? A. Sixth and Towne.

Q. Where is that with respect to the La Jolla?

A. Approximately a block.

Q. How much? A. One block.

Q. Could you see them up there?

A. I could.

Q. Did you take a look at them when you got out and went in the cleaning shop? A. Yes.

Q. To your knowledge, did they ever come any closer than one block to the La Jolla cleaning shop while you were in there? A. Yes.

Q. You walked in the cleaning shop. You said you hadn't informed Kelley you were coming. [87]

A. No, I did not.

Q. What did you say to him?

A. We exchanged greetings, and he told me he hadn't seen me in quite a while.

Q. He hadn't seen you in quite a while. How long was that? How long is quite a while?

A. Oh, about the first part of 1954.

Q. You hadn't seen him since the first part of 1954? A. That's right.

Q. That would be a little over a year——

A. I hadn't seen him to talk to. I had seen him from a distance. I passed him but I hadn't seen him to talk to.

(Testimony of Norman Fletcher.)

Q. You exchanged greetings, "Good morning, how do you do"? A. Yes, sir.

Q. Did you sit down? A. No, sir.

Q. Was Kelley sitting or standing?

A. He was sitting.

Q. He was sitting?

A. He was sitting down back of the counter.

Q. At a counter.

A. Back of the counter by the telephone.

Q. What did you say then to Kelley after you exchanged greetings? [88]

A. I told him I wanted to make a purchase, start purchasing some more stuff from him.

The Court: Was that the first thing you said?

The Witness: No, it wasn't. After we exchanged greetings, he told me he hadn't seen me around in quite a while, and I told him I hadn't been around.

The Court: Did he ask you what you were doing?

The Witness: He didn't.

The Court: So after you exchanged greetings, you began the conversation by saying you wanted to buy some stuff?

The Witness: I did.

Mr. Neblett: Excuse me, your Honor. May I confer with my associate?

The Court: It is time to take our afternoon recess. You know the one that works the hardest around here is the reporter. He has to keep busy all the time. He needs a little rest. We will now recess until 10 minutes after 3:00.

(Testimony of Norman Fletcher.)

(Recess.)

Q. (By Mr. Neblett): When we left off you were just saying that you had passed the time of day with Kelley. You hadn't seen him since about February 1954, and now it is August 22, 1955, we are discussing. Did I understand you to say in answer to the court's question that you were the one who brought up the question of stuff with Kelley?

A. I was. [89]

Q. Just what did you say?

Mr. Jensen: I am a little lost, your Honor. May we have the time of this conversation?

Mr. Neblett: August 22, 1955.

The Court: The first time he went down there.

Mr. Jensen: All right.

Q. (By Mr. Neblett): Just what did you say to Kelley after you passed the time of day and you brought up the question of stuff, what did you say about stuff?

A. I told him I wanted to make a purchase, and he replied that there wasn't anything in commission at that time for about a week, that if I had been around about a week——

Q. Now, I am not asking you what he said. I am asking you what you said. You said you wanted to make a purchase of stuff, is that right?

A. I did.

Q. Did you tell him when you wanted to purchase it? A. Yes, I did.

Q. When did you tell him you wanted to purchase it, at what time?

(Testimony of Norman Fletcher.)

A. There wasn't any exact time set, because we had a conversation in between.

The Court: Was there any discussion as to price? Did you just go in and say, "I want to buy stuff"? Did you ask what the price was, anything like that?

The Witness: No, there wasn't any discussion of any price.

Q. (By Mr. Neblett): Did Kelley say to you that he was not in the business and didn't want to have anything to do with you or stuff either, didn't he say that to you? A. He did not.

The Court: May I inquire? You go into this establishment. Was there anybody else there besides Kelley?

The Witness: Nobody else.

The Court: Just the two of you?

The Witness: Just the two of us.

Q. (By Mr. Neblett): You left after a while. Where did you meet the officers after you left, if you did meet them?

A. In Mr. Richards' house.

Q. You joined them back there? A. I did.

Q. Were they still parked up on the street when you left, or did you see them?

A. Deputy Farrington got out of the car, and also Agent Richards got out of the car and passed the shop while I was talking to Mr. Kelley.

The Court: You mean they were walking?

The Witness: They were.

Q. (By Mr. Neblett): What is the situation

(Testimony of Norman Fletcher.)

there? Are there open windows in the La Jolla cleaning shop? [91] A. It is.

Q. I mean big windows? A. It is.

Q. So you can see out? A. Yes.

Q. Is it a one-room establishment?

A. It is.

Q. It has a desk up in front? A. Yes.

Q. Did you see them go by, Farrington and Richards? A. I did.

Q. Did you notice whether they looked in or not? A. I did.

Q. Did they look in? A. They did.

Q. Did they hesitate or stop in front of the cleaning shop? A. No, they did not.

Q. And you didn't see them again until you got back to Mr. Richards' house?

A. That's right.

Q. So when you went back, you told them Kelley had said to you he couldn't furnish it at that time? Did you tell them that? A. I did. [92]

Q. And you told them that no mention was made of price or anything? A. I did.

Q. Did you tell them you were going to see Rayson then? A. No, I did not.

Q. What did you tell them about Rayson at that time?

A. Well, prior to me leaving the La Jolla Cleaners, I had a conversation with Mr. Kelley.

Q. I know that.

A. I never did give you the conversation. I never did tell you the conversation, the conversation I had.

(Testimony of Norman Fletcher.)

Q. You never did what?

A. You never did ask me the conversation I had, because that is where Rayson's name was brought in.

Q. I know that. I haven't forgotten anything. What did the officers promise to give you if you could get Kelley to sell you, or tell you where you could buy some narcotics?

A. They did not promise me anything.

Q. You just did that for the service of the government, is that right? A. Yes.

Q. When was the next time that you saw Kelley?

A. On the 13th of September.

Q. 13th of September. What was the occasion of your going there that time? Did you have a conversation with the [93] officers prior to your going to Kelley on the 13th? A. I had.

Q. What did you tell the officers as the reason for your going back the second time?

Mr. Jensen: I am going to object to that, your Honor. If we are going to have the conversation, we better have it all, not piecemeal.

Mr. Neblett: I think I can ask on cross examination leading questions, can't I, your Honor.

The Court: Overruled.

Q. (By Mr. Neblett): What reason did you state to the officers on September 13th why you were going back to see Kelley again?

Mr. Jensen: I will object to that as calling for a conclusion. There is no evidence at this time that he wanted to go back to see them again.

(Testimony of Norman Fletcher.)

The Court: Hasn't he testified he went back to the La Jolla Cleaners on the 13th?

Mr. Jensen: Yes, he has, your Honor.

The Court: Objection overruled. Read the question.

(Question read.)

The Witness: It was a conversation from the first meeting of Mr. Kelley that caused me to go back that hasn't been brought out, that you didn't ask me the conversation. Then I could explain it and tell you what was the reason. [94]

Q. (By Mr. Neblett): You didn't say anything to the officers then about going back a second time, did you?

A. Well, on the first occasion I had made arrangements.

Q. I am not asking you that. You certainly can remember this if your memory is—well, I withdraw that part of it. I won't argue with the witness. Excuse me, your Honor. I will ask it this way.

From what location did you leave to go to Kelley's cleaning shop on September 13, 1955?

A. From Mr. Richards' house.

Q. Mr. Richards' house. How long were you at Mr. Richards' house that morning?

A. Oh, maybe about an hour before.

Q. An hour. Did you have any conversation with Mr. Richards that morning?

A. Yes, we did.

Q. Was anyone else present besides Mr. Richards and yourself?

A. Yes.

Q. Who?

(Testimony of Norman Fletcher.)

A. Deputy Farrington, Sergeant Landry, and Deputy Stoups.

Q. What was said about your going back to Kelley that morning, or on that day, I won't say morning? [95]

A. I went back to tell him that I hadn't received the telephone call from Rayson.

Q. I know, but what did you say to the officers at Mr. Richards' house and what did they say to you about your going back to see Kelley? Did you just take off and drive over to Kelley's and didn't tell anybody about it? A. No, I did not.

Q. Did the officers follow you the second time?

A. They did.

Q. What did you say about it? You said something, didn't you?

A. Yes, that I was going probably to make a purchase of the narcotics.

Q. You were going to see Mr. Kelley to make a purchase of narcotics? A. Yes.

Q. Did you use the word "Kelley" or "Going to see Kelley"? A. I did.

Q. Or did you use the words "old man"?

A. I used the word "Kelley" to the officers.

Q. What did you say to the officers as to an arrangement, if any, you had to purchase the narcotics from Kelley on September 13th? Did you tell them anything about what arrangement you had, if any? [96]

A. I beg your pardon? I didn't understand that.

Q. Did you tell the officers at Mr. Richards'

(Testimony of Norman Fletcher.)

house on September 13, 1955, that you had some sort of an arrangement to purchase narcotics from Kelley on that day? A. No, I didn't.

Q. What did you say about purchasing the narcotics?

A. Since I was working on the case before that, it hasn't been brought out that Mr. Kelley told me that he was going to have—did Rayson know how to get in touch with me, and I told him yes, and I never did get in touch with Rayson, and that was my reason for going back to Mr. Kelley.

Q. Did you tell the officers that?

A. I did.

Q. You hadn't heard from Kelley at all between August 22 and September 13 when you went back, had you? A. No.

Q. You had no communication with him whatever, is that right? A. I hadn't.

Q. So you went back on September 13 and asked Kelley what the trouble was, is that right?

A. Yes.

Q. Did you tell the officers you were going to do that? A. I did.

Q. You were going back to find out what the trouble was? [97] A. I did.

Q. Did Kelley at any time prior to September 13th give you a telephone number where Rayson could be reached? A. No, he never.

Q. He did not? A. No.

Q. Did you give Kelley a number where Rayson could reach you?

(Testimony of Norman Fletcher.)

A. On the second occasion, I did.

Q. I said, did you give him that number?

A. I did.

Q. What number did you give him?

A. Pleasant 1-1648.

Q. That is Mr. Richards' home number, is it?

A. That's right.

Q. So you never heard from Rayson at all, did you, between August 22 and September 13?

A. I didn't.

Q. Nor Kelley? A. No.

Q. You went back then to see if you couldn't buy from or get from Kelley or get Kelley to set it up for you, is that what you went back for?

A. Yes.

Q. Then you were trying to get Kelley to set up a sale [98] for you, were you not, or a buy from him, or get him to set up a sale, is that what you were trying to do?

A. All my contacts, I made them through Mr. Kelley, and he arranged it for someone to call——

Q. Then you went to Kelley and asked him to arrange it? A. That's right.

Q. Without some prompting from Kelley. You never heard from Kelley until you first went there? He didn't ask you to come or say anything about it, is that right? A. That's right.

Q. You went back on the second time. Did you see Kelley? A. I did.

Q. Did the officers follow you the second time?

A. Yes, sir.

Q. Where did they stop the second time?

(Testimony of Norman Fletcher.)

A. On the second occasion, Deputy Farrington drove in front of me and Sergeant Landry and Agent Richards were behind the car I was driving.

Q. Where did this officer who was in front of you park, or did you see him park?

A. I did.

Q. Where did he park?

A. He parked in front of me in the next block, which would be between Gladys and Ceres. [99]

Q. At least a block away, was he?

A. A very short block.

Q. I mean was it a couple of hundred feet away or more? A. It was.

Q. Where did the officers park?

A. On Sixth Street and Towne.

Q. How far away?

A. About the same distance that they had parked before.

Q. Two or three hundred feet away?

A. Yes.

Q. In the rear? A. Yes.

Q. Did any of them come out and come down and stand near you when you were talking to Kelley?

A. No. I was on the inside talking to Kelley, and had observed the officers.

Q. I thought you said this morning you saw him on the street and did not go inside for the second conversation, is that right?

Mr. Jensen: I object to that. That is not the record.

(Testimony of Norman Fletcher.)

Mr. Neblett: He can say whether or not it was.

The Court: Overruled.

The Witness: No, it was the third time I went down to see him he was on the sidewalk.

Q. (By Mr. Neblett): Tell us what happened the second [100] time you went. I am sorry if I made a mistake. I did not intend to make one if I could help it.

A. I told Mr. Kelley——

Q. You went in the cleaning shop again?

A. I did.

Q. And was Kelley sitting at the same place behind the desk? A. He was standing.

Q. This time he was standing up?

A. Yes, he was.

Q. What did you say to Kelley this time?

The Court: Just a minute. Was there anybody else present besides you and Kelley?

The Witness: There wasn't anybody else.

The Court: Just the two of you?

The Witness: Just the two of us.

Q. (By Mr. Neblett): The officers were two or three hundred feet away, weren't they, both cars of them? A. They were.

Q. When you went in? A. They were.

Q. No officer was ever present when you and Kelley were talking on any of these occasions, is that right? A. That's right.

Q. And no one else was present? [101]

A. No one else.

Q. You walked in that morning and you said,

(Testimony of Norman Fletcher.)

“Good morning, Kelley,” or something to that effect?

A. He was on the telephone. He was talking on the telephone when I walked in.

Q. When he got off the telephone, what did you say?

A. After I spoke to him, I told him that Rayson hadn't got in touch with me, and he told me that——

Q. Wait a minute. I want to know what you said. What did you say?

A. I told him that Rayson hadn't got in touch with me.

Q. Didn't you ask him to get hold of Rayson and have him get in touch with you?

A. I don't recall that.

Q. What did you say about Rayson getting in touch with you? Did you only say he had not called or got in touch with you, is that what you said?

A. No, that wasn't all.

Q. What else did you say?

A. I told him he had never contacted me, and then Mr. Kelley interrupted me and told me that Rayson had told him that he had seen me——

Q. I didn't ask you that. I move to strike that out as not responsive.

The Court: It may go out. [102]

Q. (By Mr. Neblett): I asked you only for what you said. Have you told us all that you said at this conversation with Mr. Kelley?

A. No, I haven't told you all.

(Testimony of Norman Fletcher.)

Q. What else did you say? I don't want anything he said. I want to know what you said.

Mr. Jensen: Your Honor, I am going to object to this. It is manifestly unfair to request the witness to give just one side of a conversation.

The Court: I am sorry, but this is cross examination. He can ask for part of the conversation on cross examination. He is asking what this witness said, and if he can remember, he should testify.

Mr. Jensen: Without respect to any of the replies that were made?

The Court: Objection overruled.

Q. (By Mr. Neblett): Tell us all that you said to Mr. Kelley at the meeting at his cleaning shop on September 13, 1955.

A. I told him that I was still interested in the deal, and I gave him a number for him to have someone to contact me.

The Court: Just a minute. You gave him a number to have someone contact you. Did you give him a number to have Kelley contact you?

The Witness: I gave the number to Mr. Kelley.

The Court: For Mr. Kelley to contact you or somebody else to contact you?

The Witness: Your Honor, in pre-arrangement he had always taken the number and had someone else to contact me.

The Court: All right.

Q. (By Mr. Neblett): Is that all that you said at this meeting to Mr. Kelley?

A. That's all I recall.

(Testimony of Norman Fletcher.)

Q. All you recall at this time. When you left the cleaning shop on that day, did you return to Mr. Richards' house? A. I did.

Q. Was this in the morning or evening or afternoon? I have forgotten. Would you say this conversation was in the morning or afternoon on September 13? A. It was in the morning.

Q. In the morning? A. Around noon.

Q. Around noon. You know the defendant Eugene Rayson, don't you? A. I do.

Q. When was the first time you met him?

A. 1953.

Q. You said he was introduced to you by some woman? A. No, I didn't. [104]

Q. What did you say about that? I have forgotten.

A. He called me and told me that Mr. Kelley had given him a number to call.

The Court: In 1953, we are talking about?

The Witness: Judge, your Honor, he asked me the question, when did I ever meet Rayson.

The Court: And you said you first met him in 1953.

The Witness: Yes.

The Court: All right. That is what we are trying to find out. How did you meet him in 1953?

The Witness: On one transaction that I had with him through Mr. Kelley.

Q. (By Mr. Neblett): Do you recall who introduced you to Rayson?

A. No, I can't recall.

(Testimony of Norman Fletcher.)

Q. Do you know where you met him?

A. I had seen him around numerous times, just passed by him.

Q. You didn't get out of the penitentiary until what month in 1953? A. April.

Q. You had seen him around after April 1953, had you not? A. I had.

Q. After you met Rayson the first time, did you see him [105] very often? A. I did.

Q. Where did you see him? Just generally now. I know you can't pin it all down.

A. Fifth and Stanford. He was running a game, a gambling game there.

Q. A what? A. Fifth and Stanford.

Q. Fifth and Stanford. What location is that in the city? I don't know where that is.

A. The next block from the La Jolla Cleaners, exactly one block.

Q. Fifth and Stanford?

A. Fifth and Stanford.

Q. What is that? Is there a cafe there?

A. There are numerous places there, cafes, pool halls, hotels.

Q. Well, it doesn't matter. You saw him around there? A. I did.

Q. When were you contacted by Rayson, or Rayson contacted by you after September 13th? You saw Kelley on September 13th. When did you next hear from Rayson after September 15, 1955?

A. The next morning.

Q. September 14? [106]

(Testimony of Norman Fletcher.)

A. That's right, yes, sir.

Q. Where did he call you?

A. At Agent Richards' house.

Q. At Agent Richards' number? You had given that number to Rayson at some time?

A. No, I didn't.

Q. To whom did you give the number?

A. Mr. Kelley.

Q. When did you give him the number?

A. On the 13th.

Q. Rayson called you in the morning, you say, of the 14th? A. He did.

Q. What did Rayson say when he called you that morning?

A. He told me that the old man had told him to get in touch with me, that I wanted to see him.

Q. And you said this morning by "the old man," that that meant Kelley, is that right?

A. That's right.

Q. What did you say to Rayson?

A. I told him yes, that I wanted to see him.

Q. Did you say anything else except you wanted to see him? A. I don't recall.

Q. You are certain you didn't say anything else in this [107] conversation in the morning except you wanted to see Rayson, is that right?

A. I said I wanted to see him because I wanted to make a purchase of some stuff.

Q. You told him that over the telephone?

A. I did.

Q. Were you the first one that brought up the

(Testimony of Norman Fletcher.)

purchase of stuff from Rayson, or did he bring it up first? A. I was.

Q. You were the first one to mention it?

A. I was.

Q. Did you make an appointment to meet Rayson somewhere that day? A. I did.

Q. Where was that?

A. At 58th and Hoover.

Q. Did you meet him? A. I did.

Q. What time of day?

A. It was around 11:00 o'clock, I would say.

Q. In the morning?

A. In between 10:00 and 11:00. It was between 10:00 a.m., and 11:00 a.m.

Q. Were you in your car? A. I was. [108]

Q. Was Rayson in his car? A. He was.

Q. Did you park on the same side of the street?

A. I was parked there when he drove up.

Q. Did he drive up on the side of you, or did he get out?

A. He drove up beside me, in front of me about 30 feet, in front of me.

Q. And parked and got out?

A. No, he did not. I pulled up behind him and he pulled off and beckoned me around the corner and made a right turn on 57th Street and proceeded half way the block, where he parked and I parked behind him, and he got out of his car and came back and got in the car with me.

Q. To digress for a minute, I ask you if at these conversations you had with Kelley on the 22nd of

(Testimony of Norman Fletcher.)

August 1955 and the 13th of September 1955, did you have a bug or microphone on your body when you were discussing these questions with him?

A. I had one on the second occasion that I talked.

Q. Talked to Kelley? A. To Mr. Kelley.

Q. You didn't have one on the first occasion, did you? A. I didn't.

Q. How were you wired for sound, so to speak?

A. I had a Minifon placed on my person. It was a little [109] microphone that runs up here under my shirt.

Q. Was it a recording device or was it a sending device? A. I don't understand.

Q. A recording device would record it right there. Was that the kind? A. It was.

Q. It was not a sending device, was it? For instance, what I mean by a sending device is such a thing as a loud speaker that puts your voice out and it is picked up by another instrument somewhere else. Was it that type? A. It was not.

Q. What I mean by a recording device is it has a tape or wire and records it right on your person when it takes it.

A. It was a recording device.

Q. Which one was it?

A. It was a recording device.

Q. Did you have that on at any of your conversations with Rayson? A. I did.

Q. Which ones?

(Testimony of Norman Fletcher.)

A. At the meeting when he picked up the money on the 14th.

Q. Is that the only time?

A. That is the only time. [110]

Q. You mean when he picked up the money, that was the time you gave him \$700? A. Yes.

Q. What did you say to Rayson when you met him at 58th and Hoover on the 14th?

A. After I followed his car on 57th Street, he got out of his car and entered my car. I told him I wanted to purchase two ounces of heroin.

Q. There were no devices, sending devices or recording devices in your car, were there?

A. No, there was not.

Q. You didn't have one on that day you met him at 58th and drove around the corner and he got in your car?

A. Not at that time, I didn't have.

Q. At that time?

A. Not at that time.

Q. In that conversation you didn't have it?

A. I didn't have it, that's right.

Q. What did you say to Rayson when he got in the car with you?

A. I asked him, had the old man told him what I wanted. He told me he said to contact me, for him to contact me, and I told him that I wanted to purchase two ounces.

Q. Raise your voice a little bit, please.

A. He told me that Mr. Kelley had told him to contact [111] me.

(Testimony of Norman Fletcher.)

Q. I asked you what you said to him. Did you say to him Mr. Kelley had told you, Fletcher, to contact Rayson? A. No, I didn't say that.

Q. What did you say to him? You must have said something.

A. I asked had the old man told him to contact me and what I wanted.

Q. What did you tell him you wanted?

A. Two ounces of heroin.

Q. Did you say what you would pay for it at that time?

A. No. I didn't tell him what I would pay for it. He told me what it would cost me.

Q. What did you tell him you would be willing to pay for it, if anything?

A. His price was \$350, and I told him it was okay with me.

Q. \$350 an ounce? A. Yes.

Q. You told him that price of \$350 an ounce was okay with you? A. Yes.

Q. Then where did you go from there?

A. I went back to Agent Richards' house.

Q. Then you got a telephone call later on. When did [112] you next happen to hear from Rayson after that? A. At 6:30.

Q. In the evening? A. That's right.

Q. What did he do? Call you at this telephone number at Mr. Richards' home?

A. He did.

Q. Who was there at that time?

(Testimony of Norman Fletcher.)

A. Agent Richards and Deputy Farrington and Deputy Stoups.

Q. And Rayson talked to you on the telephone?

A. He did.

Q. Was there any recording device at that meeting on the telephone? A. There was.

Q. How was it set up?

Mr. Jensen: I am going to object to that, your Honor, as asking for information not shown within the knowledge of this witness.

The Court: If he doesn't know, he can say so. Objection overruled.

The Witness: It was.

The Court: The question was, how was it set up?

The Witness: To the telephone, to the part I had, the receiving part of the telephone. [113]

The Court: You told us on direct examination that you held the receiver up so that somebody else could hear.

The Witness: I did.

The Court: You didn't tell us anything about this recording device.

The Witness: I didn't.

The Court: Where did the recording device take off from? Did it take off from the receiver or from the instrument itself or from the telephone wires?

The Witness: It was a piece something like a piece of rubber placed on the telephone and it was to this machine.

The Court: To the machine?

The Witness: To the recorder.

(Testimony of Norman Fletcher.)

Q. (By Mr. Neblett): Was the whole conversation between you and Rayson at that time taken on this recording device, or whatever you call it? Was it all taken down? A. It was.

Q. The entire conversation?

A. All of the conversation that date.

Q. Who answered the telephone? Did you answer it? A. I answered it.

Q. When it rang? A. I did.

Q. Were there any other telephone calls had during the afternoon? I mean just personal calls that came in? Did you [114] answer the telephone every time? A. I did.

Q. What did you say to Rayson at this time when you said he telephoned to you at Mr. Richards' house at 6:30 in the afternoon, what did you say to Rayson?

A. There was a question asked me before he asked me was I ready, and I told him I was.

Q. What did he say about being ready?

A. Well, he had received the money previous before that, you know.

Q. What?

A. He had received the money previous to that call and it was set that he would deliver the narcotic at 6:30, and he was calling me to tell me where they was and where I could——

Q. To come back to the money, I omitted that. When was this money passed from you to Rayson?

A. That was passed on the second occasion I had of meeting Rayson that day.

(Testimony of Norman Fletcher.)

Q. 50th and Hoover?

A. No. 58th and Main.

Q. I had not covered that conversation. You met him at 58th and Main after you had met him at Hoover Street place? A. Yes.

Q. At that time you handed him \$700 at 58th and Main? [115] A. I did.

Q. Were you in his car or in your car?

A. He got out of his car and got in mine. That was in mine.

Q. Was your car wired for sound at that time?

A. No, it was not.

Q. Did you have on a recording device, on your person? A. I did.

Q. On that day when the money was passed?

A. I did.

Q. What did you say, if you recall, about the \$700?

A. I asked him what did the old man say about giving me a better deal, and he told me if I would buy more than two, I could get the same deal I had been getting before.

Q. Where were the officers when you were at this 58th and Main meeting?

A. Parked just ahead of me.

Q. Where?

A. Parked just ahead of me on the opposite side.

Q. How far ahead of you?

A. I would say about 300 yards.

Q. How close? A. About 300 yards.

(Testimony of Norman Fletcher.)

Q. About 300 yards. You couldn't even see them from where you were, could you? [116]

A. I could.

Q. Weren't there any cars parked in between or anything? A. Not that I recall.

Q. This recording device that you had on at 58th and Main, when you say you delivered the \$700 to Rayson, was that the same recording device you had on in Kelley's place? A. It was.

Q. It was a tape recorder, was it?

A. It was.

Q. Where did you go from 58th and Main?

A. Back to Agent Richards' house.

Q. Before you went to 58th and Main from Mr. Richards' house, do I understand you correctly to say you were given \$860?

A. That's right.

Q. Why \$860? A. I don't know.

Q. Didn't you have any idea what you had to pay for the stuff? A. I did.

Q. How much were you going to pay for it?

A. \$350 an ounce.

Q. You were supposed to get two ounces?

A. I was.

Q. That is \$700, isn't it?

A. That's right. [117]

Q. You say the officers searched you before you went over to see Rayson? A. They did.

Q. And you said this morning they didn't search you when you came back, didn't you?

A. They didn't.

(Testimony of Norman Fletcher.)

Q. Did they search you when you came back?

A. They did not.

Q. They searched you when you went over to see if you had money?

A. On various occasions I have made arrangements with Rayson, he would sometimes bring the package or tell me where I could pick it up. We didn't know just how that deal was going to work out, whether he had brought it with him.

Q. You left Mr. Richards' house with \$860?

A. I did.

Q. You say you gave \$700 to Kelley at 58th and Main, wasn't it? I mean Rayson. Pardon me. You gave \$700 to Rayson at 58th and Main and then you went back to Mr. Richards' house and you gave Mr. Richards' the \$160 back?

A. The \$160 back.

Q. Did Mr. Richards search you to see whether you had the \$700 on you? A. He didn't.

Q. You told him you had given the \$700 to Rayson, is [118] that right?

A. Rayson, I did.

Q. You had another conversation on the telephone later that day with Rayson, did you not?

A. I did.

Q. At what time of the day was that?

A. 6:30 that evening.

Q. Was that conversation recorded, too, on the recording device that you had at Mr. Richards' house? A. It was.

(Testimony of Norman Fletcher.)

Q. Did you ask Rayson, "Where can I pick up the stuff"?

A. No. He told me where to pick it up.

Q. I said did you ask him that.

A. No. He called, I answered the phone, and he asked me was I ready and I told him yes and he told me where to go to pick it up.

Q. That was by the railroad sign you talked about? A. Yes, sir.

Q. Do I understand that all of the telephone conversations that you had with defendant Rayson at Mr. Richards' house were recorded?

A. They were.

Q. All of them, and by this recording device which you mentioned?

A. It was. [119]

Mr. Jensen: I think for the purpose of clarification of your question, are you asking him all the conversation on September 14?

Mr. Neblett: No. I would like to amend the question.

The Court: All of the conversations, I understood.

Mr. Neblett: That's right, all that were had there.

The Witness: That day.

The Court: Well, now, other than that day, all the conversations you had with Rayson, were they recorded?

The Witness: I can't quite understand.

The Court: You had a conversation on the 14th of September. Was that recorded?

(Testimony of Norman Fletcher.)

The Witness: It was.

The Court: You had another conversation on September 14th. That was recorded, was it?

The Witness: All our conversation I had with him on September 14th was recorded.

The Court: Every time Rayson called you on the phone, was that conversation recorded regardless of the date?

The Witness: No, it was not.

The Court: Which dates weren't they recorded?

The Witness: I called him previous to that, before then.

The Court: Previous to what?

The Witness: Before the second meeting, and it was not recorded. [120]

The Court: When did you first talk to Rayson?

The Witness: On the 14th.

The Court: Of August?

The Witness: Of August.

Mr. Jensen: I think you are misleading him, your Honor. It is the 14th of September.

The Witness: September.

The Court: All right. The first time you talked to Rayson was on the 14th of September.

The Witness: 14th of September.

The Court: You tell me on the 14th of September the telephone call was recorded?

The Witness: All of the calls were recorded.

The Court: Then all the calls were recorded when you talked to Rayson, isn't that right?

Mr. Jensen: Your Honor, I am sorry. I don't

(Testimony of Norman Fletcher.)

mean to interrupt. But I think the question is misleading him because it creates the impression that is the only conversation he had on the telephone.

The Court: I am trying to find out and he says the first time he talked to Rayson on the phone was on September 14th.

Mr. Jensen: That is in these transactions, yes.

The Court: I don't care. Any transaction. I asked him what was the first conversation he had with Rayson on the phone and he said September 14th. That was at any time. [121]

Mr. Jensen: At any time in his life?

The Court: No. I mean after August 22nd.

Mr. Jensen: Do I understand your Honor's question to be that was his first telephone conversation with Rayson?

The Court: I am trying to find out if they were all recorded. We started on August 22nd. He just tells me the first telephone call he had with Rayson was September 14th.

Is that correct?

The Witness: That is correct.

The Court: And the telephone calls on that day were recorded?

The Witness: That's right.

The Court: What other date did you talk to Rayson?

The Witness: On the 22nd of September.

The Court: Was that recorded?

The Witness: I don't recall, your Honor. I don't recall whether that conversation was recorded.

(Testimony of Norman Fletcher.)

The Court: That might have been recorded and that might not have been recorded?

The Witness: Yes.

The Court: Did you talk to Rayson on any other day?

The Witness: I did not.

The Court: Just the two days?

The Witness: Just the two days on the telephone.

The Court: All right. [122]

Mr. Neblett: That's all on cross examination, your Honor.

The Court: I would like to finish with this witness this afternoon.

Mr. Jensen: I have a few questions I would like to ask if I may have the indulgence of the court.

The Court: All right. I would like to finish with him this afternoon.

Mr. Jensen: I would like to finish with him while he is here today.

Redirect Examination

Q. (By Mr. Jensen): Mr. Fletcher, I want to bring to your attention or first direct your attention to September 14, 1955. I would like you to enumerate from the early morning through the end of the day the contacts, whether in person or by telephone, that you had with Rayson from the start of the day to the finish. I don't want to know what you did or anything else, but just enumerate them, that is, count them off for us. What was the first one you had with Rayson on September 14?

(Testimony of Norman Fletcher.)

Mr. Neblett: Your Honor please, that has all been asked several times.

The Court: It has been asked and answered, yes, but there might have been some confusion in the witness' mind. I [123] am perfectly willing to have it clarified. The objection is overruled.

Q. (By Mr. Jensen): What was the first contact?

A. At approximately about 10:15 in the morning.

Q. Was it a telephone conversation or a personal conversation?

A. It was a telephone conversation.

Q. When was the next one you had?

A. It was a personal one when I met him at 58th and Hoover.

Q. What was the next one you had?

A. What time was it?

Q. What time was that one, approximately?

A. Approximately, it was between 10:00 and 11:00 a.m.

Q. What was the next contact you had with him?

A. About an hour, telephone conversation.

Q. Did you have more than one telephone conversation there together?

A. In a period of three minutes there was about two phone calls.

Q. In a period of three minutes there were two calls?

A. Yes.

(Testimony of Norman Fletcher.)

Q. What was the next contact you had with him?

A. When I met him at 58th and Main to give him the money. [124]

Q. What was the next contact you had? Wait a minute. What time was it at 58th and Main?

A. It was about 1:00 o'clock, around that time.

Q. What was the next contact you had with him? A. On the telephone at 6:30.

Q. Did you have any other contact with him the balance of that day? A. I didn't.

Q. Your testimony is that this recording device that was used by the officers was used on each of those telephone calls. You recall that definitely?

A. That's right.

Q. And that you had a recording device on you during the conversation you had at 58th and Main?

A. I did.

Q. That is your testimony. Now, go back to the conversation you had with Mr. Kelley in his place of business, which is the second occasion that you saw him on September 13, 1955. You have been asked whether or not you had a recording device on your person at that time, and your testimony, as I understand it, has been yes?

A. Right.

Q. Will you describe for us a moment the physical appearance of the recording device?

The Court: It was concealed, wasn't it? [125]

Mr. Jensen: Yes, but I would like to have him

(Testimony of Norman Fletcher.)

testify as to what the device appeared like when it was not on his person. I have a purpose. This is preliminary, if your Honor will permit me to tie it in.

The Court: All right.

Q. (By Mr. Jensen): Will you tell us the physical appearance of the recording device itself?

A. It is a little small device.

Q. Like a box? A. Yes.

Q. How long would you say it was?

A. About that long.

Mr. Jensen: May the record show he indicates eight or ten inches?

Mr. Neblett: Ten inches.

The Witness: About ten inches.

Q. (By Mr. Jensen): How wide was it?

A. About five or six.

Q. How thick was it? A. About $2\frac{1}{2}$.

Q. Where did you carry it on your person?

A. On my leg.

Q. Was there a switch that would control this device, turn it off and on? A. There was.

Q. Was it on that box? A. It was.

Q. To turn it on or off, what did you have to do while it was on your person as it was that day, September 13th?

A. Just pull a little button that could be pulled through the cloth.

Q. You would have to pull through the cloth of your pants? A. Yes.

(Testimony of Norman Fletcher.)

Q. You have stated you had a microphone up higher on your person. Where was that?

A. Under my shirt pocket. I had a handkerchief.

Q. When you went in to see Mr. Kelley on that date at the time that you have testified to, did you attempt to turn this recording device on?

A. I did.

Q. Did you in fact turn it on? A. I did.

Q. Did you feel the switch through the cloth of your pants to turn it on?

A. I did pull it.

Q. When you got back from that conversation, what did you do with this recording device?

A. It was taken off me by Deputy Farrington.

Q. Is that the last you saw of it on that particular [127] occasion? A. It was.

Q. Now, this telephone number that you were furnished by Mr. Richards of the Bureau of Narcotics, had you had that number some time prior to the meeting with Mr. Kelley and giving it to him? A. I did.

Q. When was the first time you knew Mr. Richards' telephone number?

A. The date, on the 13th.

Q. On the 13th of September?

A. On the 13th of September.

Q. Did you ever furnish this telephone number to any other person other than the defendant Kelley? A. I did not.

Q. Either before or after September 13th?

(Testimony of Norman Fletcher.)

A. I did not.

Q. Is your answer still the same?

A. The same.

Mr. Jensen: I have no further questions.

Mr. Neblett: I might ask one question, your Honor. I am not sure it is proper recross, but I will ask it anyway.

Recross Examination

Q. (By Mr. Neblett): Didn't you have Rayson's address and telephone number [128] at his place of business for a long time before, say, August 22, 1955?

The Court: Rayson?

Mr. Neblett: Rayson, yes, your Honor.

The Court: All right.

The Witness: Did I?

Q. (By Mr. Neblett): Yes, did you?

A. I had it one time.

Mr. Neblett: That's all.

Mr. Jensen: I have no further questions.

The Court: This morning you were giving me certain citations. I said I didn't want them at that stage of the game. Now that there is evidence in the record of the recorders, I would like to have those Circuit Court decisions you want me to look at.

Mr. Jensen: I represented one to be Circuit, but I am not sure that it is. *United States vs. Pierce*.

(Testimony of Norman Fletcher.)

124 Fed. Supp. 264. The second is *Flanders vs. United States*, 222 F.(2d) 163.

The Court: I will read the cases to determine what they stand for. I want to be sure that I have the citations is all.

Mr. Jensen: And I have a civil case, your Honor, which I did not give you before. It is *Reitmeister vs. Reitmeister*, 163 F.(2d) 691. Your Honor already has *Golden vs. United States*, the Supreme Court decision. [129]

The Court: Yes. May I ask a question? Is the rule in federal court relative to wire tapping any different than it is in the state courts?

Mr. Jensen: I am going to have to plead ignorance on that, your Honor.

The Court: Mr. Neblett, is the rule in federal court any different than in the state courts?

Mr. Neblett: It isn't now since the *Cahan* case. It used to be different in the state court.

The Court: The *Cahan* case brought it in accord with the federal decisions, is that right?

Mr. Neblett: California has followed the federal decisions since last May 1955, this year, but up to that time the rule was different in the federal court from the state court.

The Court: I want to find out whether or not the *Cahan* decision applied to this type of situation.

Mr. Neblett: I believe it does, your Honor.

The Court: Do you have the citation on the *Cahan* case?

Mr. Neblett: Yes, I have the case right here.

The Court: Give me the citation and I will read it.

Mr. Neblett: *People vs. Cahan*, 44 Cal. (2d) 434. It was decided April 1955.

The Court: I know. I have read the case, but I want to read it again, and then I will be able to evaluate the evidence from the cases. [130]

Mr. Jensen: Would your Honor give me an opportunity to be heard on this matter?

The Court: Not tonight. If the defendant comes to argue this matter, I will give you the opportunity to be heard.

Mr. Jensen: Thank you.

The Court: Court will now stand in recess until 10:00 o'clock.

(Whereupon, an adjournment was taken to 10:00 o'clock a.m., Wednesday, November 30, 1955.) [131]

Wednesday, November 30, 1955; 10:00 a.m.

The Clerk: No. 24,517 and 24,568, *United States vs. Eugene Rayson and Ollie W. Kelley*, further trial.

Mr. Jensen: The Government is ready.

Mr. Neblett: Ready for the defendant.

Mr. Jensen: Would you like me to continue with the presentation of evidence, your Honor?

The Court: Yes. Call your next witness.

Mr. Jensen: Mr. Richards, will you come forward, please?

MALCOLM RICHARDS

called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand and state your name, please.

The Witness: Malcolm Richards.

Direct Examination

Q. (By Mr. Jensen): Mr. Richards, you are a resident of Los Angeles County, California, are you not?

A. I am, sir.

Q. You are presently employed by whom?

A. By the Federal Bureau of Narcotics, Treasury Department. [134]

Q. How long have you been so employed?

A. Since 1948.

Q. Have you spent all that time in the Los Angeles area?

A. No, sir.

Q. How long have you been so employed in the Los Angeles area?

A. Since 1952.

Q. Are you acquainted with the witness that preceded you on the stand, Norman Fletcher?

A. I am.

Q. When did you first become acquainted with Norman Fletcher?

A. Well, it was prior—it was in the early part of 1954.

Q. Are you acquainted with the defendants, Mr. Kelley and Mr. Rayson?

A. I have seen them.

Q. Calling your attention to the date of August

(Testimony of Malcolm Richards.)

22, 1955, I will ask you whether or not you saw Mr. Fletcher on that date?

A. I did, sir.

Q. Approximately what time of the day?

A. It was early in the morning on that date, August 22, 1955.

Q. What is early in the morning?

A. I would say approximately 8:00, about 8:30 in the morning. [135]

Q. Where was it that you saw him?

A. I met him at my home here in Los Angeles.

Q. Were there other people present on that occasion? A. Yes, sir, there were.

Q. Would you state who else was present?

A. There were Sergeant Landry, Deputy Sheriffs Farrington, Stoups, and Gillette, and myself.

Q. Did you go anywhere from there?

A. We did, sir.

Q. Did anyone accompany you?

A. Yes, sir. I was with Sergeant Landry.

Q. Did you go in a vehicle or on foot?

A. We went in a vehicle.

Q. Where did you go?

A. Well, we went to several other places on a different investigation.

Q. Let me ask you this. Did you go at some time during the morning of August 22, 1955, somewhere in the vicinity of the La Jolla Cleaners on Sixth Street in Los Angeles? A. We did.

Q. Approximately what time was it that you went there?

(Testimony of Malcolm Richards.)

A. It was around noon, around 12:15.

Q. Did you observe whether or not Mr. Fletcher was in the vicinity of the La Jolla Cleaners?

A. Yes, sir, I did. [136]

Q. Would you relate to us what you did observe while you were in the vicinity of the La Jolla Cleaners?

A. Well, I observed Fletcher drive up and park a car in front of the La Jolla Cleaners, which is located at 804 East Sixth Street in Los Angeles. He got out of his car and entered the establishment. In the meantime, I had gotten out of the car in which I was riding and walked past the cleaners, and I observed him engaged in conversation or appear to engage in conversation with Mr. Kelley.

Q. Did you hear anything that was said in that conversation? A. No, sir, I did not.

Q. This man that you say is Mr. Kelley, is that the defendant who is sitting over here?

A. In the gray suit, the first one at the table there.

Q. That is the gentleman you saw talk to Mr. Fletcher on that occasion?

A. Yes, sir, I did.

Mr. Jensen: May the record show he indicates the defendant Kelley?

The Court: The record may so show.

Q. (By Mr. Jensen): Did you pass by the La Jolla Cleaners on more than one occasion at that time? A. Yes, sir, I did.

Q. How many occasions? [137]

(Testimony of Malcolm Richards.)

A. Twice.

Q. Will you state what you observed the second time you passed by?

A. Well, I walked east on Sixth Street and passed the cleaners. Then I turned back and walked west on the same street and rejoined Sergeant Landry.

Q. Immediately after that, where did you go?

A. Sergeant Landry and myself then followed Fletcher away from the area and we returned to the vicinity of my home.

Q. Now, calling your attention to September 13, 1955, did you have occasion to see Norman Fletcher on that date? A. I did, sir.

Q. Was that also at your home?

A. That is correct, sir.

Q. Could you give us an approximate time of the day?

A. It was around 7:30 in the morning.

Q. Were there others present at that time?

A. Yes, sir, there were.

Q. Would you state who they were, please?

A. They were the same crew, that is, Sergeant Landry, Deputy Sheriffs Farrington, Gillette and Stoups, and myself.

Q. Did you have occasion to leave your place to either accompany or follow Mr. Fletcher on that day? A. I did.

Q. Would you state where it was that you went? [138]

A. We drove to the vicinity of the La Jolla

(Testimony of Malcolm Richards.)

Cleaners, that is, Farrington and myself drove in my car to the vicinity of the La Jolla Cleaners.

Q. Excuse me. On this occasion were you accompanied in your vehicle by Farrington?

A. I was, sir.

Q. Continue.

A. At that time we observed that Mr. Kelley was in his cleaners at that time. Then Officer Farrington and Mr. Fletcher left the area and in a short while they returned. In the meantime I had stayed in the vicinity of the cleaners.

When they returned, I observed Fletcher as he pulled up in front of the cleaners and parked his car and got out of the vehicle and entered the cleaners. He stayed in there about five to 10 minutes, after which he entered his car and drove away and was followed by Officer Farrington and myself.

Q. Did you observe Mr. Fletcher or Mr. Kelley or both of them while they were inside the cleaning place of business there on that occasion?

A. I did, sir.

Q. Would you state whether or not they appeared to be in conversation?

A. They appeared to be in conversation, sir.

Q. Were you able to overhear anything on this occasion?

A. No, sir, I was not. [139]

Q. Did you leave your vehicle on this occasion?

A. Yes, sir. I got out and walked on the streets again.

Q. Calling your attention to the date of September—I will withdraw that.

(Testimony of Malcolm Richards.)

Prior to this meeting of September 13, 1955, had you had occasion to give a telephone number to Mr. Fletcher? A. I did, sir.

Q. Whose telephone number did you give him?

A. I gave him my home phone number.

Q. Would you state whether or not your home phone number is listed in the telephone directory?

A. It is unlisted.

Q. It does not appear in the directory?

A. No, sir.

Q. When did you first give him this number?

A. I gave it to him on the morning of September 13, 1955.

Q. Calling your attention now to the day of September 14, 1955, did you have occasion to see Mr. Fletcher on that occasion? A. I did, sir.

Q. Where did you first see him on that date?

A. He came over to my house.

Q. At approximately what time?

A. Between 7:30 and 8:00 a.m. on that morning.

Q. How long did he remain there at your place?

A. Well, we remained there until about 10:35 a.m., at [140] which time Fletcher left and he was followed by myself and Officer Farrington.

Q. Now, just a moment. During that period that you were there, will you state who was present in the house?

A. There was Fletcher, Officer Farrington, and myself.

Q. Are you a married man, Mr. Richards?

A. I am, sir.

(Testimony of Malcolm Richards.)

Q. Was your wife in the house?

A. No, sir.

Q. Then the people you have enumerated are all the people that were in the house?

A. That were present at that time, yes, sir.

Q. While you were there on that occasion did a telephone call come in?

A. That is correct, sir.

Q. More than one or just one?

A. There was just one telephone call came in at approximately 10:15 a.m.

Q. Who answered the phone?

A. Fletcher did.

Q. Did anyone in addition to Mr. Fletcher listen to that call at the receiving end of the phone?

A. Yes, sir.

Q. Who was it?

A. Officer Farrington. [141]

Q. Do you recall what was said by Mr. Fletcher during that telephone conversation?

Mr. Neblett: If your Honor please, that is hearsay. We object to it on that ground.

The Court: What do you mean, it is hearsay?

Mr. Neblett: He wouldn't know who Fletcher was talking to.

The Court: He could report Fletcher's end of the conversation, couldn't he?

Mr. Neblett: I wouldn't think so, your Honor. It is hearsay, something that took place—so far as we know, it might have been possible that this witness was just talking.

(Testimony of Malcolm Richards.)

The Court: It is hearsay as to the defendants.

Mr. Jensen: It would appear so, your Honor, but I think it comes within one of the well recognized exceptions. This is part of the *res gestae* itself. This is the very fact of the purchase and sale. To accomplish the sale, you have to enter into some sort of agreement and this conversation, it is our theory, and we have already shown preliminarily what the conversation was about, is a part of that agreement.

The Court: Mr. Neblett, Fletcher testified as to what he said over the phone. There was no objection then as to hearsay.

Mr. Neblett: I know, your Honor, but he laid a foundation for his testimony. He said he called and recognized—I objected to the testimony at first on the ground there was no foundation, and if your Honor will allow me, I will add that objection [142] to this telephone conversation, also. Fletcher testified that he was called there by Rayson at this number.

The Court: I know.

Mr. Neblett: And he recognized Rayson's voice.

The Court: It is already in the evidence that Fletcher talked to someone. This witness is asked, what did Fletcher say to someone? Fletcher has already testified to what he said, hasn't he?

Mr. Neblett: He has, your Honor.

The Court: It is already in evidence. How can you be harmed if this witness testifies when it is already in the evidence?

(Testimony of Malcolm Richards.)

Mr. Neblett: I don't know that I would be harmed by it. I didn't want to clutter up the record. Our stand in this case, your Honor, is that this was an entire deal in which they went out to get Kelley particularly, and Rayson.

The Court: I don't know. Maybe I will agree with your theory of entrapment, but I don't know yet. I haven't heard the evidence. Objection overruled.

Q. (By Mr. Jensen): Would you relate that portion of the telephone conversation which you had at that time, which was the words of Mr. Fletcher?

A. To the best of my recollection, I heard Fletcher say, "Hello. Who is this? FA * * * the old man told you to call me, huh? * * * Well, I want to see you * * * Meet you where? * * * 58th [143] and Hooper or Hoover? * * * Okay. I'll be there."

Q. Now, you have stated, I believe, that you left sometime just after 10:00 o'clock. Did Mr. Fletcher leave at that time?

A. Yes, he did.

Q. Did he leave by himself?

A. No, sir. Well, we all left approximately at the same time.

Q. Tell us what happened about the leaving.

A. At the completion of the call, I searched the person of Mr. Fletcher and furnished him \$860 of official advanced funds.

Farrington and myself then went to Fletcher's car, where Farrington searched the glove compartment and other parts of the car.

(Testimony of Malcolm Richards.)

Then Fletcher entered his car and drove away, and Farrington and myself then entered another vehicle. We followed Fletcher to the vicinity of 58th and Hoover, where I got out of Farrington's vehicle and got in the streets. Fletcher was parked on the northeast corner of 58th and Hoover. My position was—I was standing in the doorway of a loading platform, while Deputy Farrington was parked approximately a block and a half north on Hoover, facing Fletcher's car.

At approximately 10:45 a.m., I observed Rayson as he was heading north on Hoover, driving a 1955 green Mercury, Montclair. [144] He pulled just ahead of Fletcher's vehicle and stopped for a minute.

At that time Fletcher pulled out in his car and followed Rayson and they both proceeded east on 57th Street, where they stopped about the middle of the block. At that time I observed Rayson as he got out of his car.

Q. Let me interrupt just a minute, Mr. Richards. How did you get around on 57th? Did you walk?

A. No. At that time Officer Farrington had driven up and picked me up right there on the corner at 57th and Hoover, and we parked quite a distance back, or, rather west from where the defendant and Fletcher were parked.

Q. When you say the defendant, you mean the defendant Rayson? A. Rayson.

Q. From where you and Mr. Farrington stopped

(Testimony of Malcolm Richards.)

in your vehicle, were you able to observe Mr. Fletcher and the defendant Rayson?

A. Yes, sir, we were.

Q. Would you tell us what you saw?

A. Well, I saw Rayson get out of his car and he entered Fletcher's car, where they stayed for about 10 or 15 minutes. Rayson then got out of Fletcher's car and re-entered his vehicle and drove away.

In the meantime, Fletcher made a U-turn and passed us as [145] he was heading westward on 57th Street.

Q. Thereafter, did you return to your home?

A. I did, sir.

Q. And Mr. Fletcher, also? A. Yes, sir.

Q. Did you remain there for a while?

A. Yes, sir, we did.

Q. Would you state whether or not another telephone call came in thereafter?

A. Yes, sir, there was.

Q. Was there more than one telephone call that came in? A. There were two calls.

Q. Would you state when the first of these came in?

A. It was approximately 11:55 or 11:57, maybe.

Q. Just before noon?

A. That is correct, sir.

Q. On that occasion, who answered the phone?

A. Fletcher did.

Q. Would you state the approximate length of time of that conversation?

(Testimony of Malcolm Richards.)

A. I would say approximately a minute or so.

Q. Thereafter, was there another telephone call come in?

A. That is correct, sir. About five minutes afterwards.

Q. Who answered the phone on that occasion?

A. Fletcher again answered the telephone. [146]

Q. Would you state the length of time of that conversation?

A. It was longer than the first. I would say about two to three minutes.

Q. Were you able to hear what Mr. Fletcher said into the phone on those two telephone calls?

A. I did.

Q. Would you relate to the court your memory of what was said by Mr. Fletcher on that occasion, the first call first, please.

A. Well, you know, he said hello, and then he said if he can make it earlier. He said, "Can you make it earlier?"

Then at that time he said, "Okay. I will get a pencil," and then he took down several numbers on a piece of paper, then he said okay, and then he hung up the phone.

Q. Now, would you relate what you heard Mr. Fletcher state in the second telephone conversation?

A. Well, he answered. Then he said, "5:00 o'clock will be a little too late," as he had to pick up his girl friend way out in Beverly Hills.

Then he said 6:30 would be all right.

(Testimony of Malcolm Richards.)

Then he said, "I have the money and I don't want to keep it all the time. Do you want it?"

Then he said, "58th and Main?" And then he hung up.

Q. Now, going back for a moment, immediately following [147] your return to your home from 58th and Hoover, at that time did Mr. Fletcher still have the \$860 that you had given him?

A. Well, after I met him on the first time, after he returned to my home, he returned the full amount of money, \$860, to me.

Q. He had given it back to you?

A. He had given it back to me.

Q. Now, was there anyone listening to these two telephone conversations that you have now testified to, that is, at the receiving end of the telephone that Mr. Fletcher was holding?

A. Farrington did, Officer Farrington.

Q. After these two telephone calls came in, did you have occasion to leave your home again, Mr. Richards? A. I did.

Q. Did Mr. Fletcher leave, also?

A. Yes, sir.

Q. Did you leave in the company of anyone?

A. I was again with Officer Farrington.

Q. Was Mr. Fletcher in his vehicle on that occasion when he left? A. He was, sir.

Q. Did you follow him or accompany him wherever he went?

A. Well, we followed him, you know, from a distance.

(Testimony of Malcolm Richards.)

Q. Would you tell us what you observed on that occasion? [148]

A. Well, on that occasion, we saw Fletcher as he was parked on the——

Q. First of all, where did he go?

A. He went to the vicinity of 58th and Main, between Main and Broadway.

Q. Let me interrupt again, Mr. Richards. Had you already delivered the money to him on this occasion? A. I did, sir.

Q. Go ahead.

A. Officer Farrington and myself were parked on 57th Street—no, on 58th Street, between Main and Broadway. At that time we saw Rayson get out of his car and walk across the street to the north side of the street, where he stood up right next to the driver's side of the car.

Q. Of whose car?

A. Of the car in which Fletcher was driving. They appeared to be engaged in conversation, after which Rayson returned to his car, and Fletcher passed us and drove by us.

Q. Did you keep Fletcher and Rayson under observation while they were together at the car?

A. Yes, sir, I did.

Q. Would you state whether or not you saw anything pass from Mr. Fletcher to Mr. Rayson?

A. No, sir, I did not see anything pass at that time. You see, Rayson was leaning over the door of the driver's side [149] where Fletcher was seated.

Q. Did he have his head inside the window?

(Testimony of Malcolm Richards.)

A. Well, no. He was looking westward on 58th Street, and he had his head outside of the window. However, his hand was right by the door.

Q. From the position that you had at that time, Mr. Richards, were you looking at Mr. Rayson's back or his front or side, which?

A. We were looking at his front. He was sideways.

Q. After this occurred, did you return again to your home? A. I did, sir.

Q. Did Mr. Fletcher also drive there?

A. Yes, sir.

Q. Now, approximately what time was it that this meeting occurred?

A. It was approximately 12:20 p.m.

Q. Now, later in the day did you have another occasion to be at your home with Norman Fletcher?

A. Yes, sir.

Q. Approximately what time was that?

A. He arrived at my home approximately 6:00 p.m. that evening.

Q. Were there others present at your home at that time? A. Yes, there were. [150]

Q. Would you state who they were, please?

A. It was Officer Farrington and myself and my wife.

Q. Sergeant Landry was not with you on that occasion? A. No, sir, he was not.

Q. Did a telephone call come in on that occasion? A. Later.

Q. At approximately what time?

(Testimony of Malcolm Richards.)

A. At approximately 6:35 p.m.

Q. Would you state who answered the telephone?

A. Fletcher did. Fletcher answered the phone.

Q. Did you hear what he had to say into the telephone on that occasion?

A. Yes, sir, I did.

Q. Would you relate to the court what you heard? Now, let me interrupt for a moment. On this occasion, was there someone listening at the hand set of the telephone?

A. Yes, sir.

Q. Who was that?

A. I was.

Q. On this occasion, did you hear both sides of the conversation?

A. I did.

Q. Would you relate to the court the conversation that you heard on that occasion?

A. Well, when Fletcher answered the phone, a man's voice [151] stated, "Are you ready?"

And Fletcher said, "Yes."

Then the man's voice said, "The stuff is at 58th and Budlong." He said, "Look right at the bottom of a railroad sign, a RR sign." The stuff would be in a brown bag under a bottle which was in another brown bag.

Fletcher said, "Okay."

Then the man's voice stated, "Say, I am going to give you a number," and he then asked Fletcher if he had a pencil and Fletcher said yes. Then he read off a number to Fletcher, which Fletcher wrote down, and he stated—

Q. What kind of a number was this?

(Testimony of Malcolm Richards.)

A. It was an Adams prefix.

Q. A telephone number?

A. Yes, sir, a telephone number.

Q. Continue.

A. The voice said, "If you want to get in touch with me, call this number and just say that the Mercury called."

Then Fletcher repeated, "I will say the Mercury called."

Then the other man's voice said, "You get it?"

So Fletcher said, "Yes."

So that was the extent of the conversation?

Q. After that telephone call came in what did you do?

A. Well, Farrington—no, Fletcher and myself then left my house. [152]

Q. Did you leave in a vehicle?

A. In Fletcher's car.

Q. Who drove? A. Fletcher was driving.

Q. Where did you sit?

A. I sat in the passenger side in the front seat of the car.

Q. Alongside of the driver?

A. That is correct, sir.

Q. Continue.

A. Fletcher and myself entered Fletcher's vehicle and was followed by Officer Farrington. We drove to the vicinity of 58th and Budlong, where Fletcher pulled right next to a white railroad sign. I got out of the car and walked to the sign, stooped down and picked up a brown paper bag which con-

(Testimony of Malcolm Richards.)

tained a bottle, and under this bottle there was another brown paper bag. I then placed it in my pocket.

Q. The second one?

A. Yes, the second one.

Q. The one on the bottom?

A. That is correct, sir.

Q. All right.

A. I then placed it in my pocket, and we drove and returned back to my residence.

Q. I show you, Mr. Richards, a photograph which has been [153] marked United States Exhibit No. 1, and I will ask you whether or not you recognize the scene shown in that photograph?

A. I do, sir.

Q. Would you state what it is?

A. It is a picture of the area of 58th and Budlong. The next street going south on Budlong is Slauson, where the railroad tracks are.

Q. Was the picture taken with the camera facing south, pointing south?

A. Apparently it was. I was not there when the picture was taken.

Q. I understand, but from the picture?

A. Yes, it is taken facing south.

Q. Does there appear in the photograph a railroad sign that you have testified about?

A. Yes, sir.

Q. Would you say that picture is a fair representation of the scene as it appeared at the time that you were out there?

A. Yes, it is.

(Testimony of Malcolm Richards.)

Q. There is this difference, isn't there, Mr. Richards, the brown paper sack you picked up is no longer there in the picture? A. No, sir.

Q. Did you keep the brown paper sack you picked up and put in your pocket? Did you keep that in your possession? [154] A. I did.

Q. Where did you take it?

A. Later that evening we took it—

Q. Let's talk about right then. Did you take it back to your house?

A. Yes, sir. We returned to my house, to my home, and I opened it and showed it to the other officers, that is Farrington, Landry, Stoups, and Mr. Fletcher was also there at that time.

Q. Did you reveal to them the contents of the sack?

A. Yes, sir. I showed it to them.

Q. Did you keep it after that?

A. Yes, sir. I retained it in my possession.

Q. What did you do with it?

A. Well, we left my home and we came down to the office of the Bureau of Narcotics, Room 1755 of this building. There I transferred the contents of the—I mean which was in that package.

Q. What was in the brown paper sack?

A. It was a white powder.

Q. Was it in separate containers itself?

A. There was four separate cellophane bags which contained the white powder.

Q. Did you open those little bags?

A. I did, sir. [155]

(Testimony of Malcolm Richards.)

Q. What did you do with the contents?

A. I transferred the contents into another container, into four other containers.

Q. Bag for bag?

A. That is correct, sir.

Q. Now, what did you do with the new containers?

A. I placed them in a locked sealed envelope and gave it to Agent Davis, who placed it in the office safe.

Q. Did he place it in the safe in your presence?

A. He did.

Q. This was on the evening of September 14th?

A. That is correct, sir.

Q. When did you next see the contents of that locked envelope you spoke of, I mean not the contents, but when did you next see the envelope itself?

A. I saw it the following day, September 15th.

Q. Did you examine it to determine whether or not it had been disturbed or tampered with?

A. It was not disturbed or tampered with.

Q. What did you do with it on that occasion?

A. Well, on that occasion I placed it in another envelope which was addressed to Mr. R. F. Love, the ATU chemist in San Francisco. Then I took it downstairs and sent it to San Francisco via registered mail.

Mr. Jensen: May I have a moment, your Honor. Will you [156] mark this, please?

The Clerk: Government's 2 for identification.

(Testimony of Malcolm Richards.)

(The exhibit referred to was marked Government's Exhibit 2 for identification.)

Q. (By Mr. Jensen): Mr. Richards, would you assist me in opening this, please? I see it is just stapled across the top.

A. Yes, it is just stapled in the back.

Mr. Jensen: Let's mark that envelope then.

The Clerk: 2-A for identification.

(The exhibit referred to was marked Government's Exhibit 2-A for identification.)

Mr. Jensen: For the purpose of the record, the proposed exhibit 2-A will be only the brown envelope marked, and if the court will permit us to, we will further identify and mark the contents of this envelope at a later time.

The Court: That's all right with me, if there is no objection.

Mr. Jensen: I don't wish to open it at this time. I will get my exhibits labeled at the recess and save a little time.

Mr. Neblett: Very well.

Q. (By Mr. Jensen): Mr. Richards, I show you what has been marked proposed Exhibit 2 and 2-A. I will ask you to state whether or not you can identify those two exhibits? [157]

A. I can, sir.

Q. Let's take No. 2 first. Would you state for the record what it is and whether or not you have seen it on a prior occasion?

A. This is the envelope in which I placed Exhibit 2-A on September 15, 1955.

(Testimony of Malcolm Richards.)

Q. Is that the envelope which you mailed, as you have testified just now?

A. That is correct, sir.

Q. Will you state to the court and for the record what the proposed Exhibit 2-A is?

A. This is a locked, sealed envelope in which I placed the four packages on the night of September 14, 1955. I recognize it because it is my writing, and also my initials, date, weight and sealed 9-14-55.

Mr. Jensen: I think, perhaps, your Honor, I am going to have to have that opened now.

Q. Would you open the envelope and take the contents out? We are now dealing with Exhibit 2-A.

(Witness complying.)

Mr. Jensen: May the record show, your Honor, that the top of 2-A was stapled at the time of delivering to the witness?

The Court: The record may so show.

Q. (By Mr. Jensen): Would you hand me the contents, Mr. [158] Richards?

(Witness complying.)

Mr. Jensen: Would you mark these, please?

The Court: They may be marked 2-B, -C, -D and -E.

The Clerk: 2-B, -C, -D and -E.

(The exhibits referred to were marked Government's Exhibit 2-B, -C, -D and -E for identification.)

Q. (By Mr. Jensen): I show you United States proposed Exhibits 2-B, 2-C, 2-D and 2-E, Mr.

(Testimony of Malcolm Richards.)

Richards. I ask you whether or not you have seen those before? A. Yes, sir, I have.

Q. Did you mark those envelopes in such a way as to identify them to you? A. Yes, sir.

Q. In what way did you mark them?

A. My initials M. R. and the date 9-14-55 are on each individual package.

Q. Now, those are four small envelopes, are they not, relatively transparent, white?

A. That is correct, sir.

Q. Are those the envelopes that you have previously testified about in regard to transferring the contents of the other four envelopes?

A. That is correct, sir. These are the four.

Q. Then these are the envelopes—well, you state it [159] for the court. What are these envelopes actually?

A. These are cellophane bags in which I transferred the contents from the original containers which were also cellophane bags.

Q. Now, if we can refer to these as the first set and second set, these were all found in the brown paper bag, is that correct? A. Yes, sir.

Q. Did you prior to the occasion of mailing this material weigh the contents?

A. I did, sir.

Q. Do you recall at this time what the gross weight of the four containers was?

A. To the best of my recollection it is two ounces and 82 grains.

(Testimony of Malcolm Richards.)

Q. That is the aggregate of all four containers?

A. That is correct, sir.

Q. I don't know if you have testified, but if you have, will you do it again, will you tell us to whom you addressed this envelope?

A. To Mr. R. F. Love, the ATU chemist in San Francisco, California.

Q. Mr. Richards, do you still have the original containers? A. I do, sir. [160]

Q. Do you have them with you now, or are they in the courtroom?

A. They are in the courtroom.

Mr. Jensen: May I have a moment, your Honor, to have him step down and retrieve them?

The Court: Yes.

(Witness leaving stand and returning.)

Q. (By Mr. Jensen): Now, would you give me the original containers?

Mr. Neblett: May I ask the court to have counsel exhibit these to us, please?

Mr. Jensen: These are mounted on paper. I don't know if you have any objection.

Will you mark these, please, Exhibit 3?

The Clerk: 3 for identification.

(The exhibit referred to was marked Government's Exhibit 3 for identification.)

Mr. Jensen: And also these.

The Clerk: 3-A, 3-B, 3-C and 3-D for identification.

(Testimony of Malcolm Richards.)

(The exhibits referred to were marked Government's Exhibits 3-A, -B, -C and -D for identification.)

Q. (By Mr. Jensen): Mr. Richards, I show you what has been marked for identification proposed exhibit of the United States 3, 3-A, 3-B, 3-C and 3-D. Taking them in order, would you tell us whether or not you have ever seen proposed exhibit [161] 3 before? A. Yes, sir, I have.

Q. What is that?

A. This is a brown paper bag, together with a rubber band in which the other exhibits, 3-A, 3-B, 3-C and 3-D are contained.

Q. Is that the brown paper bag that you picked up at the base of the RR sign, as you have previously testified? A. This is it, sir.

Q. Did you mark it in some way so you could identify it yourself?

A. I did. My initials M. R., the date, and the time, are marked right here at the bottom.

Q. Are there other initials on there?

A. Yes, sir.

Q. Do you recognize those? A. Yes, sir.

Q. Or were they placed there in your presence?

A. They were.

Q. Are they of some of the other officers that were connected with this matter?

A. They are, sir.

Q. Was the bag in that condition at the time that you picked it up?

A. No, sir, it was not. [162]

(Testimony of Malcolm Richards.)

Q. Had it been torn at that time?

A. No, sir, it was not.

Q. Had it been discolored at that time?

A. No, sir.

Q. Now, calling your attention to the envelopes that are now marked proposed Exhibits, which are marked 3-A, 3-B, 3-C and 3-D, would you state whether or not you have seen those before?

A. Yes, sir. These exhibits——

Q. Will you state what they are?

A. All of these——

Q. When you say all of these, you are talking about Exhibits 3-A, -B, -C and -D?

A. That is correct, sir. These were the original cellophane bags in which the contents of Exhibit 2-B, 2-C, 2-D and 2-E were placed, or were.

Q. They were the ones that you found them in?

A. That is correct.

Q. At the time you found them, they were inside the proposed Exhibit 3?

A. The brown paper bag.

Q. 3-A, -B, -C and -D are mounted on paper, are they not? A. Yes, sir.

Q. There is some writing on the paper. Is that yours? [163] A. Yes, sir.

Q. Did you number the bags you had at that time? A. I did, sir.

Q. Those are the numbers that are contained, are they not, on the paper mountings?

A. That is correct, sir.

Q. At the same time as you weighed the sub-

(Testimony of Malcolm Richards.)

stance, did you also record the weight on the paper on which those bags are mounted?

A. That's right, sir.

Mr. Jensen: If the court please, we will offer at this time the United States proposed Exhibits 2, 2-B, 2-C, 2-D and 2-E, and 3, 3-A, 3-B, 3-C and 3-D.

The Court: They may be received in evidence. Any objection?

Mr. Neblett: Yes, your Honor.

The Court: All right.

Mr. Neblett: We object to the admission of these exhibits for identification and all of them in evidence upon the grounds no foundation has been laid so far for their admission. So far as we know now, they were picked up by these officers and Fletcher under a railroad sign at the corner of Budlong and Slauson. No connection whatever is shown——

The Court: I think that goes to the weight of the evidence, not to the admissibility. [164]

Mr. Neblett: If your Honor please, there is no showing whatever that this witness had anything to do with it at all except that as far as this witness is concerned, he testified he listened to a telephone conversation, but he doesn't know whether he was talking to Rayson or not.

The Court: He testified he picked up this bag. This is the contents he picked up. That's all. He is not testifying who put them there. He is not testifying how it got there. He just testified he went down

(Testimony of Malcolm Richards.)

there at this particular place and found a bag and picked it up.

Mr. Neblett: He did testify he listened to a telephone conversation that told him where to go and get it.

The Court: That is correct.

Mr. Neblett: But he doesn't know whether that was Rayson, and there is no proof that that was Rayson by Fletcher or anybody else.

The Court: That goes to the weight of the evidence and not the admissibility. Objection overruled. It may be received.

Mr. Jensen: I think I neglected to mention 2-A. In the event I did, I move also that 2-A be admitted in evidence.

The Court: It may be received in evidence.

The Clerk: Exhibits 2, 2-A, 2-B, 2-C, 2-D, 2-E, and 3, 3-A, 3-B, 3-C and 3-D.

(The exhibits were received in evidence as Government's Exhibits 2, 2-A, 2-B, 2-C, 2-D, 2-E, 3, 3-A, 3-B, 3-C and 3-D.)

Q. (By Mr. Jensen): Mr. Richards, have you had some conversations with the witness Fletcher relative to investigating cases or aiding the Bureau of Narcotics or its officers in apprehending [165] people engaged in the narcotics traffic? I am not asking you the conversation, but just whether or not you have had some.

A. Yes, sir, I did.

Q. Have you had such conversation on more than one occasion? A. Yes, sir.

(Testimony of Malcolm Richards.)

Q. Can you tell us approximately when the conversations first commenced between yourself and Mr. Fletcher?

A. In approximately the middle of February of this year.

Q. Can you give us some idea of how many conversations you have had? Let's do it this way. About how frequently would these conversations occur?

A. I would say I would see him practically every day.

Q. And these conversations were always in relation to investigations that your office was conducting?

A. That is correct, sir.

A. Now, calling your attention approximately to July of 1955, I will ask you whether or not there was a change in the policy that had theretofore existed in the Bureau relative to purchasing narcotics either by special employees or other members of the Bureau of Narcotics. Was there a change in policy at that time?

A. Yes. [166]

Mr. Neblett: If your Honor please, we object to that question on the ground it is a policy established by a department of the government.

The Court: What difference does it make?

Mr. Jensen: If the court please, the defense counsel developed yesterday that nothing had been done for some time in relation to the defendants Kelley and Rayson by Mr. Fletcher, although he had been in discussions with this man for some time.

(Testimony of Malcolm Richards.)

The Court: You can't convict a defendant by showing the policy of the government.

Mr. Jensen: No, no, your Honor. The only thing I wish to show is why this investigation was not undertaken until August of this year.

The Court: Objection sustained.

Mr. Jensen: May I have just a moment, your Honor?

The Court: We might take our morning recess. I would like for you to get through with this witness, but if we proceed and get through now, you would have still two or three more questions to ask, and if we take the recess now, you can think them up in the meantime. We will now recess until five minutes after 11:00.

(Recess.)

Mr. Jensen: Will you mark this, please?

The Clerk: Government's Exhibit 4 for identification. [167]

(The exhibit referred to was marked Government's Exhibit No. 4 for identification.)

Q. (By Mr. Jensen): Mr. Richards, calling your attention to the sacks now denoted Government's Exhibits 2-B, 2-C, 2-D and 2-E, that is the second set of containers, will you state whether or not they were new and clean containers at the time that you transferred the contents of the original containers to them? A. They were.

Q. They hadn't been used before?

A. No, sir.

Q. I now hand you the Government's proposed

(Testimony of Malcolm Richards.)

Exhibit No. 4, which is a photograph. I ask you whether or not you recognize the objects therein photographed. A. I do.

Q. Were you present at the time that this photograph was taken? A. I was, sir.

Q. Will you state to the court when it was taken?

A. It was taken on the evening of September 14, 1955.

Q. And would you state what the objects there photographed are?

A. These are the original four cellophane bags which were in the brown paper bag that I picked up from the railroad sign on that same day. [168]

Q. As photographed there, are they in the original condition prior to their having been opened by you? A. They are.

Q. Would you say that the photograph is a fair representation of their physical appearance in the condition that they were after you had removed them from the brown paper bag?

A. Yes, sir.

Mr. Jensen: The United States will offer its proposed Exhibit No. 4 for admission.

The Court: It may be received in evidence.

The Clerk: Exhibit 4.

(The exhibit referred to was received in evidence and marked as Government's Exhibit No. 4.)

Q. (By Mr. Jensen): Mr. Richards, calling your attention to September 22, 1955, would you state

(Testimony of Malcolm Richards.)

whether or not on that date you saw Mr. Fletcher?

A. I did, sir.

Q. Where was it you first saw him on that day?

A. Over at my home.

Q. Approximately what time?

A. It was around 8:30, between 8:30 and 9:00 o'clock that morning.

Q. Were there others present on that occasion?

A. There were. [169]

Q. Would you state who they were?

A. Sergeant Landry, Deputy Sheriffs Farrington, Stoups, and myself.

Q. Did you go from your home to some other locality? A. We did.

Q. Would you tell us about that, please?

A. We went down to the vicinity of the La Jolla Cleaners, 804 East Sixth Street, Los Angeles.

Q. Did Mr. Fletcher go down there, too?

A. Yes, sir.

Q. Was he by himself or with others?

A. He was in his car by himself.

Q. Would you give us the circumstances of what you saw and observed after you arrived at the vicinity of the La Jolla Cleaners?

A. I observed Fletcher get out of his car and enter the cleaners, after which I saw him and Mr. Kelley leave the cleaners, at which time I observed Kelley as he was sweeping directly in front of his establishment, the sidewalk in front of his establishment.

Q. Did they come out of the cleaners together?

(Testimony of Malcolm Richards.)

A. Yes, sir.

Q. Did they remain together on the sidewalk?

A. That is correct.

Q. You say Mr. Kelley was sweeping the sidewalk? [170]

A. That is correct.

Q. Would you state whether or not they appeared to be in conversation?

A. They did appear to be in conversation.

Q. Would you tell us approximately what time this meeting occurred?

A. It was approximately 10:20 a.m.

Q. What was its duration? How long did it last?

A. I would say for about five minutes.

Q. And thereafter did you leave?

A. Yes, sir.

Q. And return to your home?

A. That is correct.

Q. Did Mr. Fletcher join you there?

A. He did, sir.

Q. Did you remain there at your home for some time?

A. We did.

Q. Did Mr. Fletcher remain there with you?

A. Yes, sir.

Q. Would you state whether or not a telephone call came in that day?

A. Yes, sir.

Q. At approximately what time?

A. The call came in at approximately 1:15 p.m.

Q. Who answered the phone? [171]

A. Mr. Fletcher.

Q. Was someone other than Mr. Fletcher listening at the telephone headpiece?

(Testimony of Malcolm Richards.)

A. Yes, sir.

Q. Who was it on this occasion?

A. Officer Farrington.

Q. Do you recall at this time what was said by Mr. Fletcher during that telephone conversation?

A. Well, he answered the telephone and I heard him say, "Two pieces, the same as before, the same as the last deal." Then he said, "49th and Hoover."

Q. I didn't hear you.

A. Then Fletcher said, "49th and Hoover?" Then "Okay." Then he hung up.

Q. Immediately after that, did you have occasion to leave your home?

A. Yes, sir, I did.

Q. Did Mr. Fletcher also leave?

A. That is correct.

Q. Would you tell us about the circumstances?

A. Well, prior to leaving my home, I searched Mr. Fletcher and gave him \$700 of official advanced funds. He then entered his car and we followed him to the area or to the vicinity of 49th and Hoover. I was at that time accompanied by Officer Farrington in Farrington's car. [172]

When we got there, I got out of Farrington's vehicle and was on the street right there at the intersection of 49th and Hoover. Well, at approximately 1:30, I observed Rayson as he was driving southward on Hoover Street. At that time I was walking north on Hoover on the west side of the street.

(Testimony of Malcolm Richards.)

Q. Did you observe Mr. Fletcher on this occasion? A. Yes, sir.

Q. Would you state where he was?

A. At that time he was just leaving the intersection of 49th and Hoover.

Q. Yes. A. And entering into Hoover.

Q. Continue.

A. Well, I looked up and saw Rayson, and he saw me, and I continued walking toward 48th Street. At that time I rejoined Officer Farrington and we kept Fletcher under observation.

Fletcher drove to the vicinity of Figueroa and 50th Street, where he parked.

Q. Did you still have the defendant Rayson under observation at this time?

A. Well, at one time I observed Rayson as he drove down 49th Street, where he made a U-turn in the street, and due to his way of driving—I mean we discontinued.

Q. Did Mr. Fletcher stop on this occasion?

A. Yes, he stopped and parked.

Q. Did Mr. Rayson, the defendant Rayson, also stop at any time?

A. Yes, sir. He stopped and parked, and then he drove off again.

Q. What happened after that?

A. Well, we observed Fletcher as he left the area where he had been parked, and we followed him eventually to the vicinity of 55th and Budlong. At that time we observed Rayson's car as he was parked between 54th and 55th Streets. Fletcher

(Testimony of Malcolm Richards.)

double-parked right next to him, and they appeared to engage in conversation. Then Fletcher pulled away and parked in front of Rayson's car, at which time I saw Fletcher get out of Rayson's car.

Q. Pardon me?

A. At which time I saw Fletcher get out of his car and approach Rayson's.

Q. Yes.

A. Then they appeared to be engaged in further conversation, after which Rayson drove away and Fletcher re-entered his car, and we later met at my residence.

The Court: What was this date?

The Witness: This is September 22, sir.

Q. (By Mr. Jensen): Did you observe any further meetings between Fletcher and the defendant Rayson on that day? [174]

A. Yes, sir.

Q. When did that occur?

A. That occurred around 3:00 p.m.

Q. Between your return from this first meeting and the 3:00 p.m. meeting, were there any additional telephone calls?

A. No, sir, no one--my phone did not ring.

Q. Would you relate to us the circumstances of the 3:00 p.m. meeting?

A. After I returned to my residence, Fletcher and I had a conversation. Then I searched him and did not find any money on him.

Then at approximately 3:00 p.m., we left my house and we followed him to the vicinity of Main and Jefferson, where he parked his car. We then

(Testimony of Malcolm Richards.)

observed him meet defendant Rayson on the north-east corner of Jefferson and Main. They talked for about—approximately three to five minutes, after which Fletcher left Rayson and re-entered his car.

We then followed him back to my residence, where he turned over to me the \$700 which I had previously furnished to him that day.

Q. On that day, when did you first furnish him the \$700?

A. That was while we were at my home.

Q. Prior to the first meeting?

A. Prior to the first meeting at 49th and Hoover.

Q. You say you searched him after that first meeting and he no longer had the money on him?

A. That's right.

Q. Going back in your testimony to the time that you delivered the \$860, this was September 14, as I recall your testimony. Was any part of that money returned to you by Mr. Fletcher?

A. There were.

Q. When was that returned to you?

A. After the second meeting between Fletcher and Rayson, which was at 58th and Main.

Q. That would be a meeting that occurred about 1:00 or 1:30 in the afternoon?

A. Approximately 1:20, yes, sir.

Q. Did you search him at that time to determine whether or not he had the balance of the money?

A. I did.

Q. Did you find any additional money on him?

A. No, sir. He returned the \$160 to me. Then

(Testimony of Malcolm Richards.)

I searched him and he did not have any other money on him.

Mr. Jensen: I have no further questions.

Cross Examination

Q. (By Mr. Neblett): Mr. Richards, the Farrington that you mentioned, what is his position, if you know? [176]

A. He is a deputy sheriff with the Sheriff's Office of Los Angeles County.

Q. What does Landry do?

A. He is in charge, he is the sergeant in charge of his special squad.

Q. In what city?

A. Narcotics, deputy sheriff.

Q. Narcotics, deputy sheriff in Los Angeles County?

A. That's right.

Q. He is not a federal officer?

A. No, sir.

Q. You told me about Farrington and Landry. Who are the others?

A. Stoups and Gillette. They also hold the same kind of position as Officer Farrington.

Q. Deputy sheriff?

A. That is correct, sir.

Q. Was anyone else among this group you have mentioned that you haven't told me about now? Those are all of them?

A. That is concerned with this case.

Q. You and Farrington and Landry, and what others?

A. Stoups and Gillette.

(Testimony of Malcolm Richards.)

Q. Stoups and Gillette. When did you first meet Fletcher?

A. I met him—I did not actually meet him, but I knew [177] him in 1954.

Q. When did you first meet him? You said you knew him. How did you know him?

A. He was pointed out to me. He was pointed out to me and I saw him several times.

Q. He was what?

A. He was pointed out to me.

Q. By whom? A. By other people.

Q. Where? A. On Fifth Street.

Q. When did you first meet him? You must recall when you first met him.

A. The first time that I actually met him was in February 1955.

Q. What were the circumstances under which you met him in February 1955?

A. He was arrested by myself and the other officers who I work with.

Q. What officers were with you at that time, if you recall?

A. There were the same officers that I named previously, together with Agent Perry.

Q. Farrington, Landry, Stoups, and Gillette were all there at the time you arrested him? [178]

A. Stoups was not there at that time.

Q. What was he arrested for, if you recall?

A. Possession of narcotics.

Q. He was arrested here in Los Angeles County?

A. Right, sir.

(Testimony of Malcolm Richards.)

Q. What happened? Was he brought before the Commissioner, or do you know?

A. He was brought before the Commissioner.

Q. Did you testify?

A. No, sir, I did not testify.

Q. Did the Commissioner discharge him?

A. He did not. He placed him on his own recognizance.

Q. Was a hearing ever held before the Commissioner?

A. Not to my knowledge.

Q. Do you know how he disposed of that charge?

A. The case was continued by the Commissioner.

Q. And he was let out by the Commissioner on his o.r.? That means he was let out on his bond?

A. His own personal bond.

Q. His own personal recognizance, so to speak?

A. That's right.

Q. So far as you know, the case has never been disposed of, has it?

A. As far as I know, no, sir.

Q. Then after you had arrested him and he had been [179] brought before the Commissioner, when did you next see him?

A. I saw him that same day and the following day. I saw him practically every day since that time.

Q. What were you seeing him about after he had been brought before the Commissioner and released on his o.r.?

A. We had discussions.

Q. Instructions from whom?

A. I said discussions.

(Testimony of Malcolm Richards.)

Q. What were you discussing?

A. We were discussing the other narcotic peddlers from whom he had been previously dealing with and from whom he had been getting narcotics from.

Q. How did you happen to start talking to him about it at this time? Did you receive any instructions from higher up or others in authority above you to do so?

A. Yes. I discussed the case with my officer in charge, which is Agent Davis.

Q. Mr. Davis? A. Davis, yes, sir.

Q. Mr. Davis is chief of the Narcotics Bureau in Los Angeles, is he not? A. That's right.

Q. And what instructions did Mr. Davis give you about Fletcher?

A. Well, he told me to go ahead and see whether or not [180] Fletcher could aid us in any kind of way in trying to make cases on the persons from whom he had been getting narcotics.

Q. When did you first see the defendant Kelley?

A. When I first saw him?

Q. Yes.

A. That was in the early part of 1953.

Q. What were the circumstances of your seeing him in 1953, Kelley?

A. What were the circumstances?

Q. Yes. A. I saw him here in court.

Q. You saw him in court in 1953?

A. That's right.

(Testimony of Malcolm Richards.)

Q. You have known him ever since then by sight, have you?

A. Well, I knew him from before then.

Q. Were you one of the arresting officers who arrested Kelley in 1953?

A. No, sir. He was arrested in 1952, to the best of my knowledge.

Q. I guess that's right, yes. You then met him, you first saw him in 1953. You saw him in court in 1953?

A. Yes, sir.

Q. In what connection?

A. He was in Judge Yankwich's court at that time. [181]

Q. In 1953?

A. To the best of my recollection.

Q. Were you a witness at that time or do you recall?

A. No, sir, I was not a witness.

Q. You were just an observer?

A. That's right.

Q. You knew Kelley then or knew him by sight or knew who he was before you met Fletcher, didn't you?

A. Yes, sir, I did.

Q. Of course, you didn't meet Fletcher or get in contact with Fletcher until February 1954?

A. I did not say that, sir.

Q. What did you say?

A. I said in the early part of 1954, I have seen him.

Q. So you knew Kelley before you knew Fletcher by sight, knew who he was before you met Fletcher?

A. That's right.

(Testimony of Malcolm Richards.)

Q. Approximately nine months to a year prior?

A. Approximately that.

Q. Did you mention Kelley to Fletcher the first time that Kelley's name ever came up between you and Fletcher?

A. If I mentioned it?

Q. Did you mention it?

A. No, sir, I did not mention it.

Q. How did the name of Kelley first come up between you [182] and Fletcher?

A. Well, he asked—I mean we asked him who were all the persons that he had been dealing with, and he mentioned Kelley and Rayson and several others, and at that time we knew what the reputation of those people were at the time.

Q. And that was mentioned to you after Fletcher was arrested in 1955, wasn't it, when he first arrested by you in 1955?

A. Yes, sir.

Q. You don't remember the date, do you, when you arrested him in 1955?

A. Either the 17th or 18th of February.

Q. How long was it after that before you brought up the name—not you brought up, but the names of Kelley and Rayson were brought up between you and Fletcher?

A. Well, it was mentioned at the outset, at the outset, I mean, in other words, since after he was arrested and we got to talking, I mean his name was brought up.

Q. Do you remember any discussion with Fletcher in which you or any of the other officers said to him that if he would furnish you some

(Testimony of Malcolm Richards.)

names and information and facts on other persons dealing in narcotics, you would see that he got—you would help him to get rid of this proceedings which was then pending against him?

A. I did not mention any such thing, sir. [183]

Q. It never came up at all? It never came up at all between you and Fletcher?

Mr. Jensen: I object to that as being ambiguous, your Honor. I don't think either the witness nor the record would be clear if he answered as to what he means by "at all."

Mr. Neblett: I will withdraw the question.

Q. You heard Fletcher's testimony in which he said he was cooperating with the government?

A. That's right.

Q. What do you understand by cooperation?

A. In other words, it was a discussion between Fletcher and myself and Sergeant Landry and Mr. Davis, and we told him whatever he did in aiding us in trying to make cases against the persons from whom he had been receiving his narcotics, that anything that he did, that we would bring it to the attention of the United States Attorney, who in turn—I mean that we would bring it to the attention of the United States Attorney at the time that his case come up.

Q. Let's come back now, or go forward to August 22, 1955. That is the date that you have testified that you accompanied in another car or followed in another car Fletcher to the La Jolla Cleaners, 806 East Sixth Street, isn't that right?

(Testimony of Malcolm Richards.)

A. That's right, sir.

Q. Tell us what conversation was had between you and [184] the other officers, whatever other officers were present, and Fletcher, prior to your going down to 806 East Sixth Street?

A. Well, we asked Fletcher whether or not he thought that Kelley would still deal with him, and he said yes, that he had dealt previously with Kelley, and he had no reason to believe whether or not Kelley would not deal with him at that time, so we then told him, "Okay, let's go on down there and see what was happening with, you know, with Kelley."

Q. That suggestion was made by—you say "we." You were referring to yourself and Officer Farrington, and whom else? A. And Landry.

Q. Landry? A. That's right.

Q. The three of you? A. Yes, sir.

Q. You made the suggestion to him that to go and see whether or not Kelley would deal with him in narcotics?

A. Would still deal, I mean with him, because we had had information from other sources that, you know, that Kelley would——

Q. I didn't ask you that. I move to strike that.
The Court: It may go out.

Q. (By Mr. Neblett): I asked you whether or not you were the one that made the suggestion. When you say "we," [185] you were talking about yourself, Farrington and Landry, is that right?

A. That is correct, sir.

(Testimony of Malcolm Richards.)

Q. You three made this suggestion on the morning of the 22nd of August, 1955, that he, Fletcher, go down and see whether or not Kelley would deal with him in narcotics, is that right?

A. Fletcher brought it up, that he thinks he could do it, so we said, "Okay, go ahead."

Q. Didn't you just say a while ago that you made the suggestion? You said, "We made the suggestion."

A. I mean, in other words, we gave him permission to under our direction. In other words, Fletcher was working strictly under our direction.

Q. Didn't you say a while ago, "We suggested to him, Fletcher, that he go down and see whether or not Kelley would deal with him in narcotics or deal with him again," or something to that effect? Did you say that to him?

A. No, I didn't say that.

Q. What did you say a while ago?

A. I said Fletcher first brought it up and we said, "Okay, go ahead."

The Court: You mean to say the suggestion came from Fletcher?

The Witness: Yes, sir. [186]

Q. (By Mr. Neblett): What was Fletcher doing at your house that morning?

A. We were discussing various things, I mean getting information and all like that.

Q. You were discussing several cases, weren't you?

A. That's right.

Q. Or several persons?

A. That's right.

(Testimony of Malcolm Richards.)

Q. Did you have any persons in this list you gave him to look up?

A. If we had any persons?

Q. I will withdraw the question. What did you say, just exactly what did you say to Kelley, or what did any one of the officers, Farrington or Landry, say to him at this meeting at your house on the morning of August 22, 1955? Just what did you say?

Mr. Jensen: I object to this. I think counsel has misspoken himself. He said "say to Kelley."

Q. (By Mr. Neblett): What did you say to Fletcher? I will re-form the question.

What did you or any other officers—there were three officers present with Fletcher, isn't that right?

A. That's right.

Q. What did you and the other officers say to Fletcher just prior to your going down to 806 East Sixth Street? [187]

A. Well, Fletcher told us——

Q. No, what did you say?

A. What we said?

Q. What did Landry or Farrington say, or you, all of you, not what Fletcher said. What did you say?

A. All right. After Fletcher told us something——

Q. That isn't what I asked you. I asked you what you said. Can't you answer the question? It's plain, isn't it?

A. All right. I will give to you what it was.

(Testimony of Malcolm Richards.)

Q. All right. What did you say?

A. We said, "Okay. You go in your car and we will follow you down to that vicinity."

Q. So without anything else said by you, you just said, "Okay. We will get in the car and follow you." Is that right, sir?

A. Fletcher said something first.

Q. I didn't ask you that. You know what you have said. You said a while ago, didn't you, that Fletcher first brought up at your house that he would go down and see whether or not Kelley would still deal with him in narcotics. Didn't you say that?

A. That's right.

Q. What did you say in response? What did you say after that?

A. Well, we said, "Yes, go on ahead and see if he would [188] still deal with you, and we would follow you down and cover you, and then you meet us back here at our house, at my house, and we will discuss it and see what was said."

Q. Then you took off and followed Fletcher to Kelley's place of business, La Jolla Cleaners, is that right?

A. That's right.

Q. How far did you park from the La Jolla Cleaners?

A. Well, Officer Landry parked the car on Towne, that is, between Towne and the next street east, which is, I believe, Stanford. I got out of the car and walked eastward on Sixth Street, at which time I saw Fletcher and Kelley appeared to be in a conversation.

(Testimony of Malcolm Richards.)

I then walked back towards where the government car was parked, and I again looked into the window, which is a plain glass window, and I saw Kelley at that time seated at the window, apparently making a telephone call, because he had the phone up to his ear.

I then walked back to the government vehicle, where I joined the other officers, and shortly after that Fletcher left the establishment and proceeded east on Sixth Street and we followed him.

The Court: Now, just a minute. Have you memorized this story?

The Witness: Have I memorized it?

The Court: Yes, have you memorized what you are testifying to? [189]

The Witness: Sir, I am just trying to place myself at the place.

The Court: The reason I ask you that is this. I want the reporter to read the question you were supposed to answer. Evidently you are not paying any attention to the question or you have got a memorized story you are trying to give.

(Question read.)

The Court: Did that question ask what you did or where you walked? How far did you park.

The Witness: One block, sir.

The Court: I wish you would pay attention to the questions and answer them instead of wandering all over the country.

Q. (By Mr. Neblett): What did Fletcher say to you when he got back to your place?

(Testimony of Malcolm Richards.)

A. He told me what he had said to Kelley. Do you want the conversation?

Q. What did he tell you he said to Kelley?

A. He said, after he entered the cleaners, both he and Kelley said hello to each other, and he asked Kelley what was happening, and Kelley said that things were out of commission at that time but, however, last week, you know, yes, last week that there was a fellow from back East who had about 15 [190] ounces of stuff and that the guy wanted \$200 an ounce for it, or \$10,000, and that Kelley said that the fellow stated that he did not want to remain here in Los Angeles because he was hinty—that means skeptical.

Q. Is that all?

A. He also told, Fletcher also told me that Kelley asked him if he had seen Rayson, and that Fletcher stated no, he did not.

Q. At that time did Fletcher say anything to you about the fact that he had known Rayson for some time?

A. No, not at that particular time, you know. Fletcher had a—no, sir, he did not.

Q. Did he at any time tell you he had known Rayson for some time? A. Oh, yes, sir.

Q. You knew that Fletcher had a background of convictions for narcotics, did you not?

A. I did.

Q. You knew about his term he served in Folsom Penitentiary, did you not?

A. Yes, sir, he told me.

(Testimony of Malcolm Richards.)

Q. And the one in Louisiana in the federal penitentiary from Louisiana—I don't know what penitentiary he went to, but you knew he had a conviction in Louisiana in the federal court for narcotics? [191] A. Yes.

Q. And you knew he had one for receiving stolen property?

Mr. Jensen: I am going to object to that. I don't think it is permissible after a man has been pardoned from an offense to further bring it up as such.

The Court: Overruled. The question is, did he know it.

The Witness: Yesterday was the first time I knew it.

Q. (By Mr. Neblett): Did you see Fletcher in the meantime after August 22 and before September 13, 1955? A. I did.

Q. Did you see him nearly every day?

A. Every day, every other day.

Q. Was he at your house every day or nearly every day between September—between August 22 and September 13, 1955?

A. No, sir. We would meet him away from my house, too.

Q. Where did you meet him when you met away from the house?

A. Well, various other places.

Q. How do you operate? You don't operate out of the office here, except on occasion, do you?

(Testimony of Malcolm Richards.)

Mr. Jensen: I am going to object to that. It is immaterial and irrelevant.

The Court: This is cross examination. Evidently there is a defense of entrapment, although it doesn't show in any [192] plea or memorandum filed. From statement of counsel, that is one of the defenses, entrapment. Objection overruled.

Q. (By Mr. Neblett): Do you operate out of the office or mostly from your house and other places around town? A. Out of the office.

Q. And other places, too? A. Yes.

Q. So you met Fletcher on several occasions and had several conversations with him between August 22 and September 13, is that so?

A. That's right.

Q. Were the other officers present at these meetings? A. Yes, sir.

Q. Did you discuss Kelley and Rayson at these meetings? A. Yes, sir, we did.

Q. What did Fletcher report about him, if anything?

Mr. Jensen: I am going to object to this unless we know when and where and who was present at the time of the conversation. I don't think we can just have the conversation generally, your Honor.

The Court: All right. Try to designate the time of the conversations, who was present, and where they took place.

Q. (By Mr. Neblett): Tell us when the first conversation was, what date it was after August 22,

(Testimony of Malcolm Richards.)

1955, and before September 15, when you saw Fletcher. [193]

A. I can't pin down the exact date, you know.

Q. Let me ask you this way. Maybe I can help you on it. A. Yes.

Q. You did have reports from Fletcher from time to time between August 22 and September 15, 1955, did you not, on what was going on between him and Kelley, if anything? Did you hear anything about that? Did Fletcher make reports to you between August 22 and September 15, 1955, as to his progress in buying some stuff from Kelley and Rayson? A. Yes, sir, he did.

Q. How many times did he make those reports between August 22 and September 15?

A. About twice, I mean that I can recall.

Q. Do you remember where the first conversation was held when he made a report to you and the other officers?

A. I can't recall whether it was at my home or elsewhere on the street.

Q. Who was present when he made this report, the first one now?

A. Sergeant Landry and Farrington.

Q. What did Fletcher say?

A. Fletcher said that one time he was driving on 55th and Long Beach, at which time he observed Rayson standing on the corner, and that Rayson waved to him. However, he did not [194] stop.

Q. Was anything said about Kelley?

A. Not at that time, sir.

(Testimony of Malcolm Richards.)

Q. You had a second conversation or second report from Fletcher. Where was that held, if you recall?

A. It could be at my house or elsewhere.

Q. Who was present at that report?

A. Landry and Farrington and myself.

Q. And Fletcher, of course.

A. Yes, sir.

Q. What did Fletcher say, if anything, about Kelley at this meeting?

A. We asked him whether or not he had seen Rayson or Kelley at any time. He said no, he did not.

Q. Coming back to the meeting at your house on September 13, did you have a meeting at your house on September 13?

A. Yes, sir, there was.

Q. Was that the day you testified that Fletcher called on Kelley again at 806 East Sixth Street?

A. That's right, sir.

Q. What time of the day was that?

A. That was approximately 9:30 a.m.

Q. The other four officers that you mentioned were present with you at that meeting?

A. Yes, sir. [195]

Q. What did you say to Fletcher that morning about Kelley and Rayson, if anything?

A. Well, we told Fletcher that one of the officers had driven by Kelley's place of business and that he had been there, that he was there, and we

(Testimony of Malcolm Richards.)

then told him that he should try and go on down there and see what was going on.

At that time Fletcher had told—he had previously told us the way that Kelley operated, and I furnished him with my telephone number and told him that in case Kelley did ask him for a number, that he should furnish my home phone number.

Q. Then did you instruct Fletcher to go down and see Kelley? A. Yes, sir.

Q. He went down to see Kelley, did he not?

A. Yes, sir, he did.

Q. You and the other four officers followed him in one or two cars? A. Yes, sir.

Q. And what happened? Fletcher arrived at 806 East Sixth Street, the La Jolla Cleaners, and did he go inside? A. He did.

Q. Did you see him go inside? A. I did.

Q. Where were you parked at the time? [196]

A. My car was parked between Towne and Stanford.

Q. How far is that from the La Jolla Cleaners?

A. About a block.

Q. Is it around the corner?

A. No corners.

Q. Where did Fletcher park?

A. He parked directly in front of Kelley's cleaning establishment.

Q. Wasn't that the day that Kelley was on the street sweeping in front of the La Jolla Cleaners?

A. No, sir, it was not.

Q. Before Fletcher went down to see Kelley on

(Testimony of Malcolm Richards.)

this morning of September 15th, did you wire him for sound? A. I did not, sir.

Q. Did anyone do it in your presence, or did you know he was wired for sound?

A. It was not in my presence.

Q. Did you know about it?

A. Yes, sir, I knew about it.

Q. Who did it?

A. Officer Farrington.

Q. What did this wire arrangement consist of?

A. It is called a Minton or wire recorder.

Q. It consists of a wire in the machine which is that correct? [Yes]

A. That's right, sir.

Q. It is not a transmitter, is it?

A. No, sir.

Q. He was fired up with that before he left to go down to talk to Kelley on the morning of September 15, is that right?

A. I was told that.

Q. You were told that?

A. Yes, sir.

Q. By Officer Farrington?

A. That's right.

Q. Where did Officer Farrington put this attachment on him, in the house, or do you know?

A. No, sir. It was not at my house.

Q. He came in already wired, did he?

A. No, sir. Officer Farrington and Fletcher went to Farrington's home while I remained in the vicinity of Kelley's quarters.

(Testimony of Malcolm Richards.)

Q. When Fletcher came to your house on the morning of September 13, he already had the attachment on him, did he?

A. No, sir, he did not.

Q. Then after you had said to each other he was going down to see Kelley at La Jolla Cleaners that morning, after that was discussed and arranged, did Farrington take him out and wire him and then bring him back? [198]

A. We drove to the vicinity of Kelley's cleaners, and while I remained there, I saw Kelley in his cleaners at that time, Fletcher and Farrington drove away while I remained in the area of Kelley's cleaners.

Q. How long were they gone?

A. I would say about 15 minutes, 15 or 20 minutes—well, 15 minutes.

Q. How far is Officer Farrington's home from the La Jolla Cleaners?

A. About 16 blocks away.

Q. Then when Fletcher came back, he parked in front of La Jolla Cleaners and went in, is that correct?

A. That's right, sir.

Q. How far did the other officers park away from the La Jolla Cleaners?

A. Well, Officers Farrington and Gillette were out of my view at the time. I could not tell you how far away they were parked.

Q. You couldn't tell, you didn't see them?

A. No, sir.

Q. Was some other officer with you?

(Testimony of Malcolm Richards.)

A. Sergeant Landry was with me.

Q. What did Fletcher do when he arrived?

A. He got out of his car and entered the place.

Q. How long was he in there? [199]

A. About five minutes.

Q. Did you walk by the door that morning?

A. I did.

Q. You are sure this is not the day Kelley was outside on the street sweeping the street in front of the building, are you sure of that?

A. I am positive it is not the same day.

Q. What was done with that wire recording of that conversation, if you know?

A. Well, Officer Farrington turned it over to Sergeant Landry down at the Sheriff's Office.

Q. And that's all you know?

A. That's all I know about it.

Q. On the 14th, you had a conversation with Fletcher on the 14th, did you not?

A. I did.

Q. At your house? A. That's right, sir.

Q. And the other officers were there, the other four?

A. No, sir. There was just Officer Farrington and myself.

Q. Fletcher had reported to you the day before, had he not, as to what the conversation was between him and Kelley?

A. Yes, sir, he did.

Q. What did Fletcher say? [200]

A. Fletcher said when he went into the cleaners,

(Testimony of Malcolm Richards.)

he and Kelley exchanged greetings together. Then Fletcher—no, Kelley asked Fletcher whether or not he had seen Rayson, and that Kelley went on to state that Rayson had told him that he had seen Fletcher on the street some place and had waved to him, but Fletcher never did stop.

Fletcher said he told Mr. Kelley the reason he didn't stop was because at that time he did not want to do any business with Rayson out there in the open. Then Fletcher told me that he gave Kelley the telephone number which I had previously given to him, and that Kelley told him that he would not be able to get in touch with Rayson so he could meet him that morning, but that the best time would have to be some time the following day.

Fletcher also stated he told Mr. Kelley that the best time to catch him would be at this particular number he had given to Kelley, on the next morning between the hours of 8:00 and 10:30.

Q. This number was your unlisted number, was it not? A. That's right, sir.

Q. Did you give that unlisted number to Fletcher with instructions to give it to Kelley and Rayson, so that Fletcher could be called at your place?

A. I gave it to him, sir.

The Court: For that purpose? [201]

The Witness: Yes, sir.

Q. (By Mr. Neblett): What conversation did you have with Fletcher when you gave him the number?

A. Well, Fletcher told me that was the way

(Testimony of Malcolm Richards.)

Kelley operated. Each time he had business dealings with him he would have to give him a telephone number.

Mr. Neblett: Your Honor, I will move——

Q. Well, go ahead with your conversation that you had with Fletcher at the time you gave him the telephone number.

A. How far did I get?

(Record read.)

A. And then someone would call Fletcher either the same day or the day after.

So I told him, well, then, he could give him my phone number, and that is what I did.

Mr. Neblett: If your Honor please, I notice it is noon and I am not quite finished with this witness.

The Court: I have been wondering how we are going to get along. I have another case scheduled in the morning. This is the second government witness. I don't know how much longer your cross examination is going to last.

Mr. Neblett: I am not going to be very long with him, your Honor. I would say maybe 30 minutes. I have had him now for about 30 minutes.

The Court: I understand. [202]

Mr. Jensen: I think I can cut down mine, your Honor.

The Court: You have got the chemist to testify.

Mr. Jensen: Yes.

The Court: And these other officers would be more or less cumulative.

Mr. Jensen: I think probably everybody will

(Testimony of Malcolm Richards.)

want to hear from Farrington. I would like to put him on.

The Court: Who?

Mr. Jensen: Officer Farrington. Not on things that are cumulative. I won't cover everything with him. I think I could hold him down to 30 minutes, and say 15 or 20 minutes for the chemist.

The Court: I think we better come back at 1:30. Will that inconvenience you?

Mr. Neblett: That is perfectly all right.

The Court: We will recess until 1:30 this afternoon. [203]

Wednesday, November 30, 1955, 1:30 p.m.

The Court: You may proceed.

MALCOLM RICHARDS

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Neblett): Mr. Richards, you testified that you gave Mr. Kelley \$860 on the morning of the 14th, and that he took that \$860 out but brought it back, is that correct, on the second trip that morning—or the first trip? Which was it?

A. Well, the first time he met Rayson, that Fletcher met Rayson, I had given him \$860. However, when he came back to my house, I had gotten it back from him.

(Testimony of Malcolm Richards.)

Q. Then you had a telephone call, a telephone call came in to your number. Was that before you went out to meet Rayson, or in order to meet Rayson you had a telephone call from someone? The first time that Fletcher said that he was going out to meet Rayson, you had a telephone call at your house prior to that time, or a telephone call came in to your house to Fletcher, is that right?

A. That is correct, sir. [204]

Q. As I understood you to say, you didn't listen in on that call, but Mr. Farrington did.

A. That's right, sir.

Q. How did he listen in on the call? Was Fletcher listening in at the same time? How did they work it?

A. Well, Fletcher had the receiver to his ear, and Farrington also stood very close to Fletcher, and both of them listened in on the same—you know, in the same part.

Q. They stood cheek to cheek, is that it?

A. I mean close together.

Q. What was said in this conversation, or what was reported to you as having been said in this conversation that prompted you to give Fletcher the \$860?

A. You want me to recite what I heard that Fletcher said?

Q. Yes, what you heard there. You gave him \$860, but you must have heard something at that time that prompted you to give him the \$860.

(Testimony of Malcolm Richards.)

A. Fletcher told me what the other man at the other end of the phone had told him.

Q. What did Fletcher tell you?

A. He told me that he was supposed to go to meet him at a certain place, which is at 58th and Hoover.

Q. Was he supposed to go and pick up some heroin at that time? [205]

A. Whether or not he was going to get the heroin at that——

Q. What was said? Did he say he was going to get the heroin, or was he just going out and give this man \$860?

A. He said he was just going to meet and talk to him. No mention of money was made at that time.

Q. So you gave him \$860 with no mention of what was to be done with it?

A. That is correct.

Q. Then you got there first, didn't you, at 58th and Hoover?

A. No, sir. We didn't get there first. Fletcher arrived at his location first.

Q. Then you came in later?

A. Well, when he was parked, Farrington and myself was also about a block away. Then I got out of the car and walked.

Q. How close were you to Fletcher's car?

A. Well, on one occasion I just passed by him as he was parked at the curb. I just walked by him.

Q. Was the defendant Rayson there at that time?

(Testimony of Malcolm Richards.)

A. Not at that particular time, sir.

Q. When you saw somebody that you believe to be Rayson show up, you were back at your car where it was parked?

A. No, sir, I was not.

Q. Where were you? [206]

A. I was standing up on a loading platform which is located between 58th Street and Slauson Boulevard right next to the railroad tracks.

Q. Were you on the same side of the street as Fletcher? A. I was, sir.

Q. How far were you away?

A. I would say about a hundred feet.

Q. You said the defendant Rayson came and talked to Fletcher?

A. Not at that particular time, sir.

Q. Did he show up at all, then?

A. Yes, sir, he did.

Q. When did he show up?

A. Well, he showed up at approximately 10:45.

Q. Where? Did Fletcher remain parked at the same place?

A. Fletcher was parked between 57th and 58th Street.

Q. Yes.

A. And Rayson pulled right in front of him about two or three car lengths, and then Fletcher started up his vehicle and started to follow Rayson, who in the meantime had pulled out in front of Fletcher.

(Testimony of Malcolm Richards.)

Q. Where did Rayson and Fletcher go from there?

A. Well, they turned right on 57th Street, heading east. [207]

Q. How far did they go?

A. They went towards the middle of the block.

Q. And stopped? A. That's right.

Q. What did you observe then after they stopped?

A. I observed Rayson get out of his car and walk back to Fletcher's car and enter.

Q. You didn't hear any part of the conversation? A. No, sir, I couldn't.

Q. Do you know whether or not Fletcher had on the recording machine at that time?

A. He did not, sir.

Q. After that, afterwards Rayson got out of Fletcher's car and left?

A. Re-entered his car and left.

Q. What did you and Fletcher do?

A. Well, Fletcher made a U-turn in the street and passed by Officer Farrington and myself, and Rayson proceeded eastward on 57th Street.

Q. Back to your house? Did he go back to your house? A. Which one?

Q. I mean did Fletcher go back to your house?

A. He went back to my house.

Q. Did he return the \$860 then?

A. He did, sir. [208]

Q. Coming back to later that day, you had another conversation, or Fletcher had another con-

(Testimony of Malcolm Richards.)

versation over the telephone with someone, is that right? A. That is correct, sir.

Q. Who listened in on that conversation?

A. Farrington.

Q. Who? A. Officer Farrington.

Q. Farrington did all the listening in on the telephone? You didn't do any of it, did you?

A. I did not, sir.

Q. At any time?

A. Later during the day.

Q. Later in the day? A. At 6:35 p.m.

Q. Now we will proceed. You heard the telephone conversation from Fletcher's end when this call came in? A. I did, sir.

Q. Do you remember the time of the day?

A. It was exactly 11:57, because I wrote it down.

Q. After that conversation you had a report from Fletcher and Farrington as to what was said, and you gave Fletcher the \$860 back, did you not?

A. Not at that time, sir.

Q. When? [209]

A. After he received and finished another telephone conversation.

Q. Tell us the conversation when you gave him the \$860 back. What conversation did that follow?

A. It followed the first conversation which Fletcher had with this other person at approximately 12:04 p.m.

Q. That is another conversation now?

A. Yes.

Q. Another telephone conversation at 12:04?

(Testimony of Malcolm Richards.)

A. That's right.

Q. Then after that conversation, after Fletcher reported to you and Farrington reported to you as to what the conversation consisted of, you returned to Fletcher the \$860?

A. I did, sir.

Q. Then all of you started for a rendezvous, a meeting some place?

A. That is correct, sir.

Q. Where was this meeting held this time?

A. 57th between Main and Broadway.

Q. And did you observe Rayson at that meeting?

A. I did, sir.

Q. Tell us what happened.

A. Well, as Officer Farrington and myself parked Farrington's car, I observed Fletcher as he was parked on the [210] north side of the street, on 57th, but closer towards Main. Then we saw, at least I saw Rayson walk across the street from his car and stood up right next to the driver's side of Fletcher's car.

Q. He didn't get in the car, did he?

A. No, sir. He stood right next to it.

Q. Could you tell whether or not the window was open in Fletcher's car?

A. I couldn't see whether or not the window was open.

Q. He was on the left-hand side of the car, on the driver's side, was he not, Rayson?

A. That's right.

Q. Did you hear any conversation that took place between the two at that time?

(Testimony of Malcolm Richards.)

A. No, sir, I did not.

Q. How far were you away?

A. I would say about a hundred yards or so.

Q. A hundred yards away?

A. That's right.

Q. 300 feet this time? A. Yes, sir.

Q. How long did this meeting between Rayson and Fletcher last?

A. I would say between three and four minutes.

Q. Did you see any money pass between the two at that [211] time?

A. I myself did not.

Q. You didn't see anything pass between the two? A. No, sir.

Q. When you all left and Rayson left, and then Fletcher left, you all reconvened at your house?

A. That is correct, sir.

Q. Did Fletcher say he had given out any of that money? A. He did.

Q. How much did he say he had given?

A. He said he had given Rayson \$700.

Q. What did he say he had given it to him for? For what purpose did he say he had given it to him? A. For the two ounces of heroin.

Q. The purchase of heroin?

A. That is correct, sir.

Q. Did he purchase any heroin at that time, or do you know?

Mr. Jensen: I object to that as being a conclusion of law, calling for a conclusion of law.

The Court: Overruled.

(Testimony of Malcolm Richards.)

Q. (By Mr. Neblett): Go ahead. Did Rayson receive the money and did Fletcher purchase any heroin from Rayson at that time, if you know?

A. At that time, no, sir. I don't know. [212]

Q. How do you know that? Because Fletcher told you that?

A. When Fletcher returned—could I explain?

Q. Yes, go ahead and we will see.

A. When Fletcher returned to my home, he gave me \$160 and told me that he had given the \$700 to Rayson. I then searched Fletcher's person and there was no other money or narcotics on him.

Q. Did you search Fletcher's car to see whether the \$700 was in there?

A. I did not, sir.

Q. Did anyone else, to your knowledge, search his car? A. Not to my knowledge.

Q. All you know then about the \$700 as having been given to Rayson is Fletcher's word that he did? A. That's right.

Q. You didn't see it pass, did you?

A. I did not see it actually pass, sir.

Q. Was Fletcher in your view all the time from the time that he left Rayson at this rendezvous we have just discussed until he arrived at your home?

A. He was, sir.

Q. You kept him constantly under observation?

A. Correct, sir.

Q. But you didn't look into his car at all, did you? [213]

A. I did not look into his car.

(Testimony of Malcolm Richards.)

Q. So far as you know, no one else did?

A. As far as I know, no.

Q. Did Fletcher come back with any heroin.

Did he come back from this meeting with any heroin? A. No, sir.

Q. What did he say to you about paying the money and not getting the stuff, so to speak? You understand what I mean by the stuff, do you not?

A. I do.

Q. What did he say about that?

A. He said that he had paid the \$700 to Rayson and that Rayson had told him that he would call him at my house at 6:30 p.m., at which time he would tell him where the stuff was or meet him and give him the stuff.

Q. Did you tell Fletcher that was all right and for him to give up \$700 of this money without the stuff having been delivered? A. I did.

Q. You told him that was all right, did you?

A. I did.

Q. About 6:30, did you receive another call?

A. The phone rang at my house at 6:35 p.m.

Q. Did you listen in on this conversation?

A. I did. [214]

Q. What was said by the person—well, I guess the person called and Fletcher answered and said hello? A. Yes, sir, he did.

Q. Then what was said by the person calling?

A. "Are you ready?" Do you want me to go ahead?

Q. Yes.

(Testimony of Malcolm Richards.)

A. This male voice said, "Are you ready?"
Fletcher said, "Yes."

Then this person continued to state, "Go to 58th and Budlong and look right at the bottom of a railroad sign, a R. and R. sign, and the stuff would be right there, and it was under—it was in a brown paper bag right under another bottle in another brown paper bag."

Q. Did the voice talking on the other end of the phone say when it was put there, when the stuff was put there?

A. No, sir, he didn't say that.

Q. How long had it been since you had seen Rayson on the street with Fletcher earlier? You had seen him that afternoon earlier. What time was that?

A. That was the time he delivered over the money to Rayson.

Q. How much time elapsed between that and the time this telephone call came to Fletcher at your house in the afternoon saying the stuff is on the railroad sign?

A. I would say about six hours. [215]

Q. These telephone conversations you have described, were they recorded on any recording machine?
A. Yes, sir, they were.

Q. All of them?

A. The conversations on that date, yes, sir.

Q. You testified to one conversation that took place early in the morning.

A. That is correct.

(Testimony of Malcolm Richards.)

Q. Was that recorded? A. Yes, sir.

Mr. Jensen: I am a little confused. Are we talking of person-to-person conversations or telephone conversations?

Mr. Neblett: I am talking about telephone conversations only.

Mr. Jensen: All right.

Q. (By Mr. Neblett): There was a second telephone conversation, I believe you said, at 11:57, wasn't there? A. That's right, sir.

Q. Was that recorded? A. It was.

Q. And then there was another telephone conversation, I believe you said, at 12:20, wasn't it?

A. 12:04.

Q. Was that recorded? A. Yes, sir. [216]

Q. Then there was a fourth conversation in the evening about 6:30, 6:50, something like that?

A. 6:35.

Q. And was that recorded? A. Yes, sir.

Q. What kind of recording device did you have?

A. It is a regular recording machine, you know, on tape.

Q. Did you attach it to the telephone? You had a telephone attachment, didn't you?

A. Yes, sir. There was some clamp that was attached to the receiver and then it was recorded.

Q. The clamp was attached to the wire or clamp attached to the receiver? A. That's right.

Q. Did that block the receiver out so that the person couldn't listen to it?

A. It did not.

(Testimony of Malcolm Richards.)

Q. That was not a speaker, just a wire recorder?

A. It was just one wire that led from the speaker into the recording machine.

Q. Was that wire or tape or was it a record recorder? Which was it? You know a record, a celluloid record, and some of them are on wire and some are on tape? Which was this?

A. This one was tape. [217]

Q. Tape? A. That's right.

Q. Did you set it up, or who set it up?

A. I did not set it up.

Q. Who set it up?

A. Officer Farrington did.

Q. You don't know where it came from, do you?

A. I believe it came from the Sheriff's Office.

Q. You mean the Sheriff of Los Angeles County? A. That's right, sir.

Q. Do you know where that tape recording is now, the actual tape? A. Yes, sir, I do.

Q. Who went away with it?

A. Who went away with it?

Q. Who took it away from your place, these various tape recordings?

A. Sergeant Landry did.

Q. There were other telephone conversations? Were there any other telephone conversations at all except the ones you have testified to now happening on the 14th of September? Those were all?

A. That's right.

Q. Those four? A. That's correct. [218]

Q. After you got the fourth and last call on the

(Testimony of Malcolm Richards.)

14th—I say you, I mean the group, but the call, of course, came to Fletcher, didn't it?

A. That's right.

Q. Then you went down to Budlong and Slau-
son, did you not? A. I did.

Q. You related that this morning, as to what
took place. A. Correct, sir.

Q. Did you have Fletcher with you all day on
the 14th?

A. For a period—let's see. For a period of from
the time in which he left his home and went to pick
up his girl friend.

Q. What time did he leave—I don't quite get
you. He went to pick up his girl friend. When was
that?

A. Around from 4:30 to about 5:30 p.m.

Q. After he had gotten back from the meeting
with Rayson, why, he told you and the other of-
ficers assembled he had given Rayson \$700. Then
you released him to go and pick up—I say released
him, I don't mean by that you had him under ar-
rest, or anything of that sort, but you excused him,
let's put it that way, you excused him and he went
out to pick up his girl friend?

A. He was with us until about 3:00 p.m. over
at my [219] home, and then he left my house and
went over to his house, and after he left his house,
he went to meet his girl friend.

Q. He left for his house about 3:00 p.m., is that
right? A. That's right.

Q. And you didn't see him again until when?

(Testimony of Malcolm Richards.)

A. Well, we followed him over to his house.

Q. Well, you didn't follow him from his house to pick up his girl friend? A. No, sir.

Q. How long was he gone from his house to pick up his girl friend?

A. I would say about an hour and a half.

Q. How far is it from your house, or how far is it from Fletcher's house to Budlong and Slauson?

A. I would say about approximately three miles, three and a half miles.

Q. How far is it from Budlong and Slauson to your house? A. How far?

Q. Yes. A. About two blocks.

Q. Two blocks?

A. About two and a half blocks.

Q. Where is Fletcher's house that you spoke of a moment ago? Do you know the address? [220]

A. It was located on Fairfax near Jefferson.

Q. I am speaking of the house he was in at that time. It doesn't matter whether he is there now or not, but the house he was living in then was near Jefferson and what? A. Fairfax.

Q. Fairfax. It's about three miles from there to Budlong and Slauson?

A. Yes, I estimated it at that.

Q. A drive of 10 minutes, about?

A. It depends on traffic.

Q. Well, even with heavy traffic it is not over 20 minutes, is it? A. No, sir.

Q. Did you leave Fletcher's house when you followed him over to his house prior to the time he

(Testimony of Malcolm Richards.)

left it to go to Beverly Hills to pick up his girl friend, as he told you he was going to do?

A. If I followed him——

Q. No. You followed him from your house.

A. To his house.

Q. To his house. A. Right.

Q. That is about three miles, isn't it?

A. Approximately.

Q. You are getting out toward Beverly Hills, aren't you? [221]

A. That is way out west.

Q. When you got to Fletcher's house, did you get out and go in? A. No, sir.

Q. Did he get out and go in? A. He did.

Q. What did you do then?

A. Well, I and Officer Farrington stayed in the neighborhood.

Q. What do you mean by that?

A. Well, we parked outside and waited.

Q. For him to come back from Beverly Hills?

A. No, sir, for him to leave his house.

Q. How long was he in his house before he left?

A. I would say about an hour and a half.

Q. In his house before he left?

A. Right.

Q. Do you know whether he had a telephone in his house? A. Yes, he had a telephone there.

Q. He did have a telephone? A. Yes, sir.

Q. You know that of your own knowledge, do you not? A. Yes, sir.

Q. He did have a telephone.

(Testimony of Malcolm Richards.)

A. Yes, sir, I do. [222]

Q. Do you remember the number of it?

A. Yes, I do.

Q. What is it or what was it at that time?

A. Wyoming 7725.

Q. He went into the house at about what time when you and Officer Farrington accompanied him from your house to Fletcher's house, what time was it when Fletcher went in his house?

A. He got there approximately 3:30 or thereabouts.

Q. And then he parked outside or he went into a garage, or what did he do?

A. He went into a garage.

Q. You didn't go in the house at all?

A. No, sir.

Q. Did Officer Farrington go into the house?

A. No, sir.

Q. You said you remained in the neighborhood. Did you tell Fletcher you were going to remain in the neighborhood? A. I did.

Q. How far did you go from the house? You must have parked, didn't you? A. I did.

Q. How far from his house?

A. Just across the street.

In other words, there was an alley there and I parked in [223] the alley.

Q. How long was it you stayed there before Fletcher left?

A. About an hour, approximately an hour, thereabouts.

(Testimony of Malcolm Richards.)

Q. Do you know whether or not he telephoned anyone while he was there?

A. No, sir, I can't.

Q. You don't know what he did when he was in the house, do you?

A. No, sir, I don't.

Q. You didn't enter the house at all yourself?

A. Right.

Q. Is there a fence around the front yard of his house?

A. It is an open front yard.

Q. No fence?

A. No, sir.

Q. You didn't go on the yard even at all, you didn't go on the premises at all, did you?

A. No, sir.

Q. Did Farrington go on the premises at all?

A. He did not.

Q. No other officers were with you?

A. We were later joined by Sergeant Landry.

Q. You were what?

A. We were later joined by Sergeant Landry and Gillette, [224] Officer Gillette.

Q. They were with you?

A. They came up there later.

Q. What do you mean? Did they come up?

A. They got there about 4:30 or thereabouts.

Q. What time did you get there, you said?

A. Around 3:30.

Q. And when Sergeant Landry and—what is the other one's name?

A. Gillette.

Q. When Sergeant Landry and Gillette arrived,

(Testimony of Malcolm Richards.)

Fletcher was still in the house? A. He was.

Q. He left the house about what time?

A. I would say around a quarter to 5:00 or thereabouts.

Q. You say you arrived about 3:30 and you remained in the neighborhood parked across the street, you did, and finally Sergeant Landry and Officer Gillette showed up and you stayed there, and Fletcher came out of the house about 4:45, is that right? A. Between 4:45 and 4:30.

Q. I mean approximately 4:45.

A. Yes, approximately.

Q. And he drove off, didn't he?

A. We talked to him. [225]

Q. What did you say to him?

A. He told us he was going to pick up his girl friend or something, so we told him okay, but be back at my house around 6:00 o'clock.

Q. To be at your house around 6:00 o'clock, and that was an hour and a quarter away, wasn't it?

A. That's right.

Q. Did he tell you where he was going, to Beverly Hills or to something of that sort?

A. It is on Beverly Boulevard, if I recall.

Q. He did not give you the address, did he?

A. No, sir.

Q. When he left, what did you do?

A. Well, I and the other officers drove back to the vicinity of Main and Jefferson Streets, where we took up observation of the car of Rayson.

Q. Was Rayson's car there? A. It was.

(Testimony of Malcolm Richards.)

Q. Parked there?

A. It was parked in front of his place.

Q. Did you see Rayson?

A. No, sir, I did not see him.

Q. Did the car remain parked there all this time, his car?

A. Well, at the time that we arrived there, we saw his [226] car parked almost directly in front of his place of business, which is a recreation parlor.

Q. He did have a place of business, didn't he?

A. A recreation parlor.

Q. How long did the car remain there?

A. Well, we got there around 5:00 or thereabouts, and the car was there at the time, so Officer Farrington and myself drove to the north side of the establishment, and by the time we got back to Main Street, his car was gone. However, we did not see the other officers, who were Sergeant Landry and Gillette.

Q. So far as you know, the car was gone about around 5:00 o'clock or in that neighborhood, say?

A. Around that time.

Q. Then from there you went back to your house?

A. No, sir, we did not go directly back to my house.

Q. Where did you go?

A. We made a telephone call and contacted Sergeant Landry and the other officer, and we later met in the vicinity of Figueroa and 49th Street.

Q. What was your purpose in going there?

(Testimony of Malcolm Richards.)

Fletcher was still in the house? A. He was.

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Q. I mean approximately 4:45.

A. Yes, approximately.

Q. And he drove off, didn't he?

A. We talked to him. [225]

Q. What did you say to him?

A. He told us he was going to pick up his girl friend or something, so we told him okay, but be back at my house around 6:00 o'clock.

Q. To be at your house around 6:00 o'clock, and that was an hour and a quarter away, wasn't it?

A. That's right.

Q. Did he tell you where he was going, to Beverly Hills or to something of that sort?

A. It is on Beverly Boulevard, if I recall.

Q. He did not give you the address, did he?

A. No, sir.

Q. When he left, what did you do?

A. Well, I and the other officers drove back to the vicinity of Main and Jefferson Streets, where we took up observation of the car of Rayson.

Q. Was Rayson's car there? A. It was.

(Testimony of Malcolm Richards.)

Q. Parked there?

A. It was parked in front of his place.

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Q. So far as you know, the car was gone about around 5:00 o'clock or in that neighborhood, say?

A. Around that time.

Q. Then from there you went back to your house?

A. No, sir, we did not go directly back to my house.

Q. Where did you go?

A. We made a telephone call and contacted Sergeant Landry and the other officer, and we later met in the vicinity of Figueroa and 49th Street.

Q. What was your purpose in going there?

(Testimony of Malcolm Richards.)

A. To discuss matters.

Q. Other cases?

A. No, sir, this case, this same case.

Q. 49th and Figueroa? [227]

A. Yes, sir. It was on Figueroa, I think. It is either 49th or 50th Street.

Q. Why did you pick out that location?

A. Because the radio told us Sergeant Landry would meet us in that vicinity. It is just that we picked that area.

Q. How long did you stay at 49th and Figueroa or in that vicinity?

A. I would say we stayed there about five or ten minutes.

Q. What did you do then?

A. Then Landry and myself—no, not Landry. Farrington and myself then returned to my home.

Q. Where did Landry and the others go?

A. I don't know.

Q. What time did you arrive at your home?

A. I got there around 10 minutes to 6:00.

Q. What?

A. Around 10 minutes to 6:00 or thereabouts.

Q. You left at 3:30 to accompany Fletcher to his home, which is out in the neighborhood of—that's Fairfax and Jefferson, isn't it? Isn't that what you said?

A. Yes, sir.

Q. Then you arrived back at your home about 5:40. You were gone from 3:30 to 5:40 from your house. [228]

(Testimony of Malcolm Richards.)

A. Yes, approximately, until 10 minutes to 6:00 or thereabouts.

Q. All right. Was Fletcher at your home when you arrived?

A. No, sir, he was not.

Q. What time did he show up?

A. Around 6:00 o'clock or about five after 6:00.

Q. Do you have any knowledge of where he went other than what he told you, when he was gone for this period of about two hours and a half?

A. No, sir, I don't.

Q. You only know what he told you about it, that he was gone to pick up his girl friend?

A. That's right.

Mr. Neblett: That's all.

Redirect Examination

Q. (By Mr. Jensen): Was he gone two hours and a half or was the question misleading?

A. He was gone from about a quarter of 5:00 until the time he came to my house.

Q. That would be an hour and 15 minutes then?

A. That's right.

Q. Mr. Richards, have you at any time ever made any [229] promises or agreements with Mr. Fletcher about not prosecuting him or not presenting any evidence against him, or anything of that nature, other than making a statement to him that you would advise the United States Attorney's office as to his activities in aiding us in the investigation of this type of cases?

(Testimony of Malcolm Richards.)

Mr. Neblett: If your Honor please, we object to that question on the ground it is incompetent, irrelevant and immaterial, and the promise would be illegal if he made it, because he had no authority to make any such promise in the first place.

The Court: Sustained.

Mr. Jensen: I don't believe I have any further questions.

The Court: Step down.

(Witness excused.)

Mr. Jensen: Officer Farrington, will you come forward, please?

WILLIAM R. FARRINGTON

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please, and state your name.

The Witness: William R. Farrington.

Direct Examination

Q. (By Mr. Jensen): You are a resident of Los Angeles County, are you [230] not?

A. Yes, sir, I am.

Q. You are presently employed by the County of Los Angeles, are you not? A. I am.

Q. How long have you been so employed?

A. Approximately three and a half years.

Q. In what capacity are you employed by the County of Los Angeles?

(Testimony of William R. Farrington.)

A. Deputy Sheriff, assigned to the Narcotics Division.

Q. Is that a fairly large squad, the narcotics detail?

A. Approximately 32 men in the Sheriff's office.

Q. Approximately 32 men. Is Sergeant Landry another member of that squad?

A. He is.

Q. Do you work with him?

A. Yes. He is the officer in charge.

Q. And also with Federal Agent Richards, who just left the stand?

A. Yes, sir.

Q. Are you acquainted with the defendants Kelley and Rayson?

A. Yes, sir, I am.

Q. What was the first occasion that you became acquainted with the defendant Kelley, where, the time? [231]

A. The first occasion I became acquainted with him was at the time of his arrest, Sergeant Landry and myself.

Q. Don't refer to the incident. Give me the date, as nearly as you can remember.

A. As I recall, it was October 8 of this year.

Q. Is that the first contact you had with the defendant Kelley?

A. That is the first personal contact I have had with the defendant.

Q. Had you seen him prior to that?

A. Yes, sir, I had.

Q. What was the first occasion that you ever saw him that you recall?

(Testimony of William R. Farrington.)

A. It was approximately three years ago at the time that I joined the narcotics detail.

Q. Would that be some time in 1952?

A. No. It was 1953.

Q. 1953?

A. 1953, as I recall, yes, sir.

Q. Was he pointed out and identified to you at that time? A. He was.

Q. Would you state whether or not you have seen him off and on during the intervening period of time? A. Yes, sir, I have. [232]

Q. When was the first time that you observed the defendant Rayson, saw him, had him pointed out to you, the date?

A. In January, as I recall, some time in January or February of 1955, as I recall, the first part of this year.

Q. Have you had occasion to see the defendant Rayson on other occasions since that time?

A. Yes, sir, I have.

Q. Have you ever had occasion to have a telephone conversation with him?

A. No, sir, I have not.

Q. Have you ever heard him speak?

A. Yes, sir, I have.

Q. On more than one occasion?

A. Yes, sir, I have.

Q. Would you state whether or not he has a distinctive voice? A. I would say so.

Mr. Neblett: Excuse me, your Honor.

Mr. Jensen: It is preliminary.

(Testimony of William R. Farrington.)

Mr. Neblett: I object on the ground it calls for a conclusion.

The Court: It is a conclusion, but how do you recognize voices? They don't all sound the same.

Mr. Neblett: No, your Honor, that is true.

The Court: Sometimes they have a brogue, an accent. [233] Some people born south of the Mason and Dixon line never do learn to talk.

Mr. Neblett: I am afraid your Honor is referring to me.

The Court: Well, we all have peculiar accents. I have a peculiar accent, a peculiar twang. Overruled. I was born south of the Mason-Dixon line.

Mr. Neblett: Yes, I know where the court was born. If I may be pardoned for digressing, your Honor, I believe I could have recognized it from your voice if I hadn't already known.

Q. (By Mr. Jensen): Mr. Farrington, will you describe the voice or method of speech or any of the distinctive qualities that you heard?

A. The defendant has a—it isn't a harsh voice. It is a muffled type voice and his words are, you might say, garbled at times.

Q. Would you say whether it is high, low, or medium?

A. It is a low voice, rather low.

Q. Now, calling your attention to September 14, 1955, at the time of approximately 10:00 a.m. in the morning, I will ask you whether or not at that time on that date you were in Mr. Richards' home here in Los Angeles County.

(Testimony of William R. Farrington.)

A. Yes, sir, I was.

Q. Did a telephone conversation come in at that time?

A. A telephone conversation was. [234]

Q. Did you take the call?

A. No, sir, I did not.

Q. Did you listen to the call? A. I did.

Q. Would you state whether or not you recognized the voice you heard coming in on the telephone call from the other end?

A. Yes, sir, I did.

Q. Will you state to the court what voice that was?

A. It was the voice of the defendant Rayson.

Q. Would you relate to us that telephone conversation, please?

A. Yes, sir, as I recall. Fletcher answered the phone and the voice said, "Do you know who this is?" Rayson's voice.

And Fletcher said, "No. Who is this?"

He said, "You don't know who this is?"

Fletcher said, "F. A.?"

He said, "Yes." So he said, "The old man told you to call me?"

Q. Who said that?

A. Fletcher made that statement, "Did the old man tell you to call me?" He said, "Did Kelley tell you to call me?"

He said, "He gave me this number, but he didn't say anything as to what you wanted." He says, then Rayson says, [235] "Well, where are you? How can

(Testimony of William R. Farrington.)

I get in touch with you and where are you? Are you in the sixties, fifties, seventies, or what?"

And Fletcher stated that he was in the fifties.

Rayson then stated, "Well, you can't get to me now. You are in bed, aren't you?"

Fletcher stated no, he could get to him.

Rayson then stated, he directed Fletcher to meet him at 58th and Hoover in approximately 20 minutes.

Q. Is that all the conversation that you recall?

A. As I recall.

Q. All right. Were you present at a later time, approximately noon or thereabouts, at the same place on the same date when another telephone call came in?

A. Yes, sir, I was.

Q. Did more than one call come in very close together at that time?

A. Yes, sir.

Q. Did you take the calls?

A. I listened to the calls. I did not take them.

Q. You did not answer the phone?

A. No, sir.

Q. Mr. Fletcher answered the phone?

A. He did.

Q. Did you recognize the voice that was on the other [236] end of the telephone conversation from Mr. Fletcher on the first of those telephone calls?

A. Will you state the question again?

Q. Let me rephrase the question. Calling your attention to the first of the two calls that came in near noon, would you state whether or not you recognized the person calling?

(Testimony of William R. Farrington.)

A. Yes, sir.

Q. Who was the person?

A. It was the defendant Rayson.

Q. Did you hear all that telephone conversation?
A. Yes, sir, I did.

Q. Would you state the substance in effect or the words, if you recall, of that conversation?

A. At that time Fletcher stated that he only could get to Rayson, asked him what did he want, did he want the two, he couldn't do any better on the price, and there was a conversation about the price.

Fletcher stated he only wanted the two.

Rayson stated that it would be approximately 5:30 before he could do any good.

Fletcher then stated that that was rather late, as he had an errand to run.

Rayson then stated, started to give Fletcher some numbers, in fact, he gave him approximately five numbers, then [237] he changed his mind and said, "Wait a minute. I will call you back. I might fix it so we can do it right now."

Q. Was that the end of that conversation?

A. That was the end of that conversation.

Q. Now, another telephone conversation occurred immediately afterwards, did it not?

A. Approximately two or three minutes after that.

Q. Did you listen in to that telephone conversation?
A. Yes, sir, I did.

(Testimony of William R. Farrington.)

Q. Did you recognize the person originating that call?
A. Yes, sir, I did.

Q. I mean by that the person calling Mr. Fletcher?
A. Yes, sir.

Q. Will you state who that person was?

A. Defendant Rayson.

Q. Would you state to us the substance in effect or words, if you recall them, in that conversation?

A. At that time the defendant stated it would be impossible to do it before the 5:30 time.

Fletcher then stated that that was still too late, he wanted to do it before dark.

Rayson then said, "Well, how about 6:00. It isn't dark then."

Fletcher said, "That's all right."

So he said 6:30, and so the both of them agreed on [238] 6:30 as the time.

Fletcher then said that he had the money and that he did not wish to carry the money around all day, and did Rayson want the money at that time?

Rayson then stated, yes, and he directed Fletcher to meet him as he stated on the same one and Main.

Fletcher then said, "Do you mean 58th or 57th? We pulled off on 58th Street."

Rayson then said 58th and Main.

Q. And was that all the conversation?

A. That was substantially all of that conversation.

Q. Now, Mr. Farrington, are you the officer that

(Testimony of William R. Farrington.)

furnished this Minifon that we heard testimony about?

A. I was the officer that placed the Minifon on Fletcher.

Q. Was the first occasion that you placed this Minifon on Fletcher prior to the meeting at the La Jolla Cleaners that occurred in the morning of September 13th?

A. That is correct.

Q. Where was this done?

A. It was done at my home at that time.

Q. First of all, give us very briefly a description of this device, will you, please?

A. It is a small white plastic box, you might say, approximately one inch thick, six and a half inches long and [239] four inches across. It has a place for an attachment on the top. It has a button that you pull out at the top to engage the device. On this attachment you place a plug similar to a tape or wire recorder with a microphone into this attachment, and it has a cord that goes up and holds the microphone.

Q. Did you have the microphone in the cord at the same time? A. I did.

Q. What was the approximate length of that cord?

A. I should say about approximately two and a half feet. It would reach from the inner part, as I recall it, of a man's leg to his breast pocket here in a standing position.

Q. How was this device attached?

A. It was attached at that time to his left leg

(Testimony of William R. Farrington.)

by adhesive tape, and the microphone was engaged under his shirt and behind his inside shirt pocket, and pinned there with a safety pin.

Q. After this meeting at the La Jolla Cleaners that morning, September 13, was this Minifon returned to you?

A. Yes, sir, it was. I took it off of Fletcher's person myself.

Q. At a later date did you examine it in detail?

A. Yes, sir, I did.

Q. Would you state for the court its appearance at the time of your examination. [240]

A. At the time of the examination, we——

Q. Perhaps I should direct you a little bit in this, Mr. Farrington. This recording device uses a wire, does it not?

A. It does.

Q. Had the wire been unwound from the reel?

A. Yes, the wire had been progressing.

Q. Did you attempt to play the wire?

A. Yes, we did.

Q. Was there any sound on it?

A. There was not.

Q. Would this indicate whether the machine was turned on?

A. The machine was engaged.

Q. It wouldn't unreel the wire without having been turned on?

A. No, sir.

Q. What was the appearance of the connection between the microphone and the recording device?

A. It was approximately one-eighth inch up out of the actual socket. It has a clamp, a button clamp at the bottom of it. This was not engaged.

(Testimony of William R. Farrington.)

Q. Is the electrical circuit completed when there is a one-inch gap there?

A. No, sir, it isn't.

Q. So although the reel had run, nothing had been transmitted [241] from the microphone to the wire?

A. That is true.

Q. The wire was blank. You did play it, did you not?

A. Yes, we did.

Q. Did you place this recording device on the person of Mr. Fletcher on any occasions on September 14, 1955?

A. Yes, sir, I did.

Q. When was the first occasion?

A. At approximately, I should say 11:55, almost noon, at the time of the second call, after the second call, a little after 12:00 o'clock.

Q. Was it placed on Mr. Fletcher's person in the same fashion as it had been before, as you have described?

A. It was.

Q. Was this recording device returned to you after the meeting between Fletcher and defendant Rayson at 58th and Main?

A. Yes, sir, it was.

Q. Did you subsequently play this recording?

A. I turned it over to Sergeant Landry. We in turn took it to the Scientific Investigation crew, who transferred the contents.

Q. Let's do it this way. Have you heard the recording taken at that time?

A. Yes, sir, I have. [242]

Q. Would you describe to the court whether or

(Testimony of William R. Farrington.)

not it was intelligible? I mean by that, can it be clearly understood?

A. Parts of it can, yes, sir.

Q. Did you use this recording device on another occasion other than these two that you have testified to?

A. On the 22nd of September.

Q. Was that placed on Mr. Fletcher's person by you at that time?

A. Yes, by Sergeant Landry and myself, it was.

Q. Was this prior to the meeting that Mr. Fletcher had with the defendant Kelley when Mr. Kelley, I believe, was sweeping the sidewalk?

A. It was.

Q. Was the recording device retrieved by you after this meeting?

A. It was.

Q. Have you had occasion to listen to the recording taken at that time?

A. Yes, sir, I have.

Q. Would you state whether or not that recording is intelligible?

A. At first, no. It is intelligible after quite a few times listening to it, but at first it isn't.

Mr. Neblett: If your Honor please, we move that any further testimony about this recording he is talking about now, September 22, be—we object to it on the ground he has already said after listening to it several times, it is unintelligible.

Mr. Jensen: I think his testimony was the other way.

The Court: He said if you played it long enough

(Testimony of William R. Farrington.)

and many times, you could pick up a word here and there and finally decide what it meant.

Mr. Neblett: Very well, your Honor.

Q. (By Mr. Jensen): On these instances of listening to this, is there a lot of background noise, engineering defects, and so on?

A. Yes, sir, there are.

Mr. Jensen: May I have just a moment, your Honor? I have no further questions.

Mr. Neblett: We don't have any questions, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Jensen: Call Mr. Gowans.

WILLIAM J. GOWANS

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand please, and state your name? [244]

The Witness: William J. Gowans.

Direct Examination

Q. (By Mr. Jensen): For the benefit of counsel for the defense, would you state your full name, please? A. William J. Gowans.

Q. You are a resident of the city of San Francisco, are you not?

A. I am employed at San Francisco.

Q. Where do you reside?

(Testimony of William J. Gowans.)

A. San Jose, California.

Q. Are you an employee of the federal government?

A. I am.

Q. In what capacity?

A. As a chemist for the Internal Revenue Bureau of the Treasury Department.

Q. In the course of your going through school, did you study chemistry?

A. I did.

Q. Have you graduated from a college?

A. I hold a B.S. degree in chemistry.

Q. What college did you graduate from?

A. University of San Francisco.

Q. You say with a degree in chemistry?

A. B.S. degree in chemistry. [245]

Q. What time was that you graduated?

A. 1941.

Q. And have you been employed—

Mr. Neblett: If the court please, we will not require the government to establish this witness' qualifications any further.

The Court: All right.

Mr. Jensen: I take it from that statement that they are stipulating that this man is qualified to make a chemical analysis of a substance delivered to him, tell us the quantity and tell us the substance it is.

Mr. Neblett: Yes, that's right.

Q. (By Mr. Jensen): I will ask you whether or not some time in the month of September 1955 you received through the mail the envelope that I

(Testimony of William J. Gowans.)

here hand you, which has been admitted as Government's Exhibit 2. A. I did.

Q. At the time you received it, would you state whether or not it was sealed? A. It was.

Q. I now hand you Government's Exhibit 2-A, which is another envelope, and ask you whether or not at the time that you opened the first exhibit I handed you, No. 2, it contained Exhibit 2-A.

A. It did. [246]

Q. And I further hand you Government's Exhibits 2-B, 2-C, 2-D, and 2-E. I would like you to examine them and tell us whether or not those exhibits were included in Exhibit 2-A at the time that you opened it. A. They were.

Q. Have you identified those last four exhibits so that you recognize them?

A. Yes. My initials are on them.

Q. Can you tell us the date that you received them?

A. I received them in our laboratory on the 16th of September 1955.

Q. Now, I will ask you whether or not they have been in your possession or under your control until I took them away from you in the court room this morning. A. They have.

Q. Did you weigh the contents of the four packages that are marked Exhibit 2-B, 2-C, 2-D and 2-E? A. I did.

Q. What did you find their weight to be?

A. I believe it was a little over two ounces. To be exact, two ounces, 64 grains.

(Testimony of William J. Gowans.)

Q. Was that before or after you made the analysis?

A. It weighed two ounces, 82 grains, before and two ounces, 64 grains, after. We used up 18 grains in the analysis. [247]

Q. You used 18 grains in the analysis?

A. That is correct.

Mr. Neblett: Pardon me, counsel. May I inquire what a grain is of an ounce, or what the percentage is?

Q. (By Mr. Jensen): How many grains in an ounce, Mr. Gowans? A. 437.

Q. A grain is a subdivision of weight in an ounce, is it not? A. Yes, that is correct.

Q. Did you run a qualitative analysis on the substances contained in these packages?

A. I did.

Q. What did you find? A. It was heroin.

Q. Did you run a quantitative examination on the substance contained in these packages?

A. I did.

Q. Will you tell us what percentage of heroin was found to be contained therein?

A. 21.7 heroin.

Q. Would you state for the court whether or not heroin is a derivative of opium? A. It is.

Mr. Jensen: I have no further questions. [248]

Mr. Neblett: No cross examination.

The Court: You may step down. May this witness be excused? I suspect he wants to get back to San Francisco.

(Testimony of William J. Gowans.)

Mr. Jensen: I have no further questions.

Mr. Neblett: We have no further use for him, your Honor.

The Court: You may be excused.

The Witness: Thank you.

(Witness excused.)

Mr. Jensen: Would it be convenient to take a short recess?

The Court: Yes, we can take our recess now. We will recess until 10 minutes to 3:00.

(Recess.)

Mr. Jensen: Your Honor, we would like permission to recall Mr. Fletcher for just one or two very brief questions.

The Court: I am very suspicious when you want to call a witness for one or two questions, because it usually goes to more than that. What more can he testify to? There has been absolutely no testimony to controvert his testimony so far.

Mr. Jensen: That's right, your Honor. I was going to offer testimony as to where he was between a quarter to 5:00 and 6:00 o'clock on September 14th.

The Court: I think I will deny your request. I don't think it is necessary to call him back.

Mr. Jensen: All right, your Honor. May the court's ruling [249] be qualified to this extent, that if it becomes material, I may do it on rebuttal?

The Court: Yes. If it becomes material, you may bring him back on rebuttal.

Mr. Jensen: Thank you, your Honor. The

United States has no further witnesses it wishes to call. What other witnesses I contemplated and mentioned in my trial memorandum are cumulative, and I will not call them.

The United States rests.

Mr. Neblett: If the court please, the defendants yesterday made a motion to strike certain parts of the testimony of the witness Fletcher. I didn't quite understand whether the court took it under submission.

The Court: I didn't take it under submission, but I didn't bar the door. I allowed an opportunity to make another motion, and you are privileged at this time to make any motion you see fit.

I ruled before there was any testimony before the court. The only testimony I had was that the conversation was overheard by people standing by the receiver. There had been no wires or no attempt to tap the telephone conversation, or anything like that. That is why I ruled. But I ruled because I did not think all the evidence was in and I was not qualified to pass upon it.

Mr. Neblett: Your Honor please, I don't think the situation has changed. [250]

The Court: You make your motion and we will pass upon it.

Mr. Neblett: I don't believe I shall renew that motion because in the circumstances I don't think the situation has changed at all. I think it is just as it was, that the only testimony before the court at the present time is something that the court has passed upon, listening in over a receiver.

The Court: No. We have testimony that there was a wire attached to the receiver and there was a listening device. We have that testimony.

Mr. Neblett: That testimony doesn't go any further than to say that they did have a listening device attached, but they haven't offered it.

The Court: That's right. They haven't offered anything at all about that so-called device except some of the witnesses testified that they listened, and whether or not they listened to the telephone receiver or whether they were listening through the listening device, I don't know, but they listened to the conversation and they testified to what they heard.

Mr. Neblett: If your Honor please, it is considered that the government hasn't connected it up. It is not proved whether they listened over a receiver or listened to the recording device. It would be clearly inadmissible and the motion to strike, I think, should be granted. [251]

The Court: I haven't got a motion to strike so far. If you will state your motion to strike in general terms, you don't have to specify the exact testimony, but in general terms, then I can rule.

Mr. Neblett: May I consult with Mr. Dudley a minute?

If your Honor please, I can't specify in any more particularity than moving to strike the testimony of the witness Fletcher and the witness Farrington and the witness Richards as to their testimony relating to that part of the evidence which has been produced by the government on the propo-

sition that certain telephone conversations were made to the house of Richards on his telephone number, and to that telephone was attached a listening device which the government has shown was attached, a tape recorder, and it has been testified here that the tape recordation was somewhat indefinite, but you could listen to it several times and tell what it said, so I assume that the testimony that they are giving here is testimony they learned from this tape recorder which they have not yet offered in evidence.

I feel that the motion to strike could be well taken upon the ground that obtaining evidence in that manner is in violation of Section 605, I believe it is, 47 USCA.

The Court: I am familiar with the section.

Mr. Neblett: I think it is 47 USCA. I am not sure. The testimony is adduced in violation of the defendants' rights [252] guaranteed to them under the Fourth and Fourteenth Amendments to the Constitution of the United States.

The Court: Colonel, yesterday when you made your motion I denied the motion primarily upon the ground that at that time there was no testimony of any listening device. The only testimony was that one of the witnesses had stood by the earphone and heard the conversation, but I anticipated from what was said that there was going to be some testimony of a listening device, and I assumed maybe this case would fall within the rule as laid down in *People vs. Cahan*, which has caused so much controversy in the District Attorney's office. I thought

maybe this case might fall in the same category.

I will have to admit I did not know what the rule was and I thought possibly that there might be some difference between the United States and the California rule. I think I stated this yesterday. I might say this. If there is a United States Supreme Court case, I must necessarily follow the United States Supreme Court. If there is no United States Supreme Court, but there is a Ninth Circuit case, I have to follow the Ninth Circuit. If there is no Ninth Circuit decision and there are decisions in other circuits, I may follow those circuits or I may not. I don't think I am obligated to. And, of course, I am not obligated to follow a decision of a District Court. Even we disagree among ourselves in this District as to what the law is. So first I want to know whether [253] or not the Supreme Court has spoken. If the Supreme Court hasn't spoken, I want to know what the Ninth Circuit has said, if it has passed upon the matter. If the Ninth Circuit has not passed upon the matter, I want to know what the other circuits have said.

Yesterday, I did not know what the law was and what the rule was in this Circuit. The government referred me to the case of *Goldman vs. United States*, 316 U.S. 129. But the most important thing in that decision that I found was the statement of Chief Justice Stone, and Chief Justice Stone said—this is a Supreme Court case which did not arise in this Circuit. It arose in another Circuit. But Chief Justice Stone said:

“Had the majority of the court at this time been

willing to overrule the Olmstead case, we should have been happy to join them, but as they have declined to do so"——

So I wanted to know what the Olmstead case was that the United States Supreme Court had refused to overrule. So I got out the Olmstead case, and lo and behold, it is a Ninth Circuit case. It arose in this Circuit. I might read the syllabus to you.

"Use in evidence in a criminal trial in the federal court of an incriminating telephone conversation voluntarily conducted by the accused and [254] secretly overheard from a tapped wire by a government officer does not compel the accused to be a witness against himself in violation of the Fifth Amendment."

In that case the defendants were convicted in the lower court, went to the Ninth Circuit, the Ninth Circuit affirmed the conviction, and it went to the Supreme Court on certiorari and the Supreme Court sustained the conviction. In that case the testimony was gathered and gotten by the use of telephone.

One of the latest cases that has been brought to my attention, and this is really a late case, because it was decided in April of this year, is *Flanders vs. United States*. *Flanders vs. United States* points out there is a division in the Circuits on the rule.

Assuming that these telephone conversations cannot be admitted if there is a tapped wire, there seems to be an opinion among some of the Circuits that you don't have to get consent of both parties, that if you have consent of one party that is suf-

ficient. In this latest case here, which comes from the Sixth Circuit, that is the opinion.

"We are of the opinion," so the court says, "that where by means of an extension phone or other device a third party listens in on a telephone conversation with the consent of one party, there is no interception of communication within [255] the meaning of the statute."

Not only that, but one of the other cases cited to me was the case in New York where Judge Hand had written the opinion, and after the coming down of the Supreme Court case, the Golden case, Judge Hand stated he did not believe that the Golden vs. United States case had overruled the decision in the Court of Appeals of United States vs. Polokoff. So there in the Circuits there is this division. One Circuit holds if there is an intercepted telephone conversation, it can't be used. In fact, it destroys all the testimony. It doesn't destroy that particular part of the testimony, but all the testimony.

There is another line of cases among the Circuits that holds if you have consent of one of the parties, that is sufficient.

Of course, we have consent of one of the parties. We have the consent of the informer. He is the one making the telephone call and he consented. If we follow the rule in *Flanders vs. United States*, the conversation is admissible. If we follow the rule in the *Olmstead* case, the conversation is admissible. The Ninth Circuit has already ruled as far as telephone conversations in this state are concerned.

So I have to deny your motion.

Mr. Neblett: Your Honor please, a motion I desire to make at this time is a motion for acquittal of both the defendants [256] under Rule 29 of the Rules of Criminal Procedure. Of course, that motion is based primarily upon two grounds.

Ground No. 1 is that there isn't sufficient evidence here to establish that any offense has been committed. I want to divide this motion in the indictment between Count 1 and Counts 2 and 3. Count 1 is the conspiracy count. We are of the opinion that there is some difference between the situation covered by Count 1, the conspiracy count. There are different principles of law applicable to that than there are to Counts 2 and 3. I will devote myself first to Counts 2 and 3.

In our opinion, we believe firmly that there is no evidence whatever to sustain a conviction under those two counts, either of those two counts, I should say. Count 2 is:

"On or about September 13, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Ollie W. Kelley and Eugene Rayson did, after importation, knowingly and unlawfully receive, conceal, and transport, and facilitate the concealment and transportation of a certain narcotic drug, namely: Approximately two ounces, 82 grains, of heroin."

The other count, Count 3, that we are talking about at this moment is: [257]

"On or about September 13, 1955 in Los Angeles

County, California, within the Central Division of the Southern District of California, defendants did knowingly and unlawfully sell and facilitate the sale of a certain narcotic drug, namely, approximately two ounces, 82 grains, of heroin, to Norman Fletcher."

The only evidence the government has offered to sustain the charge in those two counts is that they have an informer named Fletcher, and Fletcher, or special agent I think the government calls him, is a man of a long criminal background. He is 35 years old. He has been convicted three times, twice for narcotics and once for receiving stolen property. He has served a term in the federal penitentiary arising out of Louisiana for conviction under the Harrison Narcotics Act. He served a term in the state court in California in Folsom Penitentiary, three years, and only got out in 1953.

The agents were evidently trying to pin something on Kelley and Rayson, so they got this man to go to see Kelley. The conversations with Kelley were that they wanted to know whether he could get some of the stuff, that is, the conversation testified to so far was that, and Fletcher said he referred him to Rayson.

Then nothing happened for 22 days at all. Didn't hear from Kelley. Didn't hear from Rayson. So they got excited and sent him back, and this time they put a wire recording instrument on his leg with a microphone in his pocket. He came back and gave about the same conversation with Kelley.

Then, of course, the court remembers the evidence

well, but to come right to the point in this case, finally, some of the things in this case are incredible of belief——

The Court: You are making a motion for acquittal upon the lack of the government's evidence or based upon the lack of the government's evidence?

Mr. Neblett: Yes, your Honor.

The Court: Now, if I would believe the government's witness, you are asking me to pass upon the question now of whether I believe the government's witnesses or not.

Mr. Neblett: That's right.

The Court: But upon your motion I have to take the testimony for what it stands for. I am not passing upon the credibility of the testimony. I am taking the testimony as the fact and as true. If he is telling the truth, then your motion has to be denied.

Mr. Neblett: That is correct, your Honor. But a point we would like to make in this motion, if you will allow me, I will ask Mr. Dudley to argue this motion. We would like to present to the court as a matter of law at this time that the evidence shows here even if the court has to believe all the [259] testimony that is in at this time, that there was an entrapment.

The Court: I don't think that I can pass upon the question of entrapment until I hear the testimony of the defendants. I don't know whether they were entrapped or not. They haven't told me they were entrapped. You are telling me they were en-

trapped, but maybe they will get on the stand and say, "No, I was not entrapped." I don't know what they are going to testify to. Your motion may be good, but I think it is a little premature.

It may be that the defendants can produce testimony that they will show that they were entrapped, but as far as the testimony now stands, I think I am going to have to deny your motion.

Mr. Neblett: Very well, your Honor. We will call our first witness.

The Court: Call your first witness.

Mr. Neblett: Mr. Kelley.

OLLIE W. KELLEY

one of the defendants herein, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Ollie W. Kelley. [260]

Direct Examination

Q. (By Mr. Neblett): Your name is Ollie W. Kelley? A. Yes.

Q. Where do you live, Mr. Kelley?

A. 1818 Victoria Avenue, Los Angeles.

Q. Speak up a little louder, please.

A. 1818 South Victoria Avenue, Los Angeles.

Q. How long have you lived there?

A. About a year.

Q. Prior to that time you lived in Los Angeles County at another address? A. Yes.

Q. Where was that?

(Testimony of Ollie W. Kelley.)

A. 346 East Golden Avenue.

Q. You lived at that address for several years, didn't you? A. Several years.

Q. Do you know the defendant Rayson?

A. Yes.

Q. How long have you known him?

A. Well, I couldn't exactly say, but I have seen him come in and out of the cafe for a year, year and a half.

Q. You have two businesses. One is a cleaning shop and the other is a—— [261]

A. Cafe.

Q. A cafe? A. Yes, sir.

Q. Where is the cafe?

A. 723 East Sixth Street.

Q. That is about a block from the La Jolla Cleaners?

A. No. It is just across the street, about 40 or 50 feet.

Q. Can you tell us now how you met the defendant Rayson or how you came to know him? How did you come to know him?

A. Just casual, coming in the cafe eating.

Q. To do what?

A. Coming in the cafe eating at different times, and then I did some cleaning for him.

Q. Did anyone ever introduce you to him?

A. Well, no, not formal introduction or anything like that. Just casual coming in, hello, and meeting him coming in the shop and getting his name that way, and taking in his clothes.

(Testimony of Ollie W. Kelley.)

Q. Have you ever had any business transactions with him of any kind? A. No.

Q. How long has this casual acquaintance existed?

A. Oh, possibly a year and a half. Some time in 1954.

Q. You act as cashier in the cafe sometimes, don't you? [262] A. Yes.

Q. You are around there quite a bit?

A. Yes.

Q. You manage it and supervise it?

A. I do.

Q. You are familiar with most of the patrons who come in there, you know them after a while if they come in quite often, do you not?

A. That's right.

Q. Is that the extent of your acquaintance with Rayson? A. Yes, sir.

Q. Do you know Norman Fletcher?

A. Well, yes, casually, the same way. Just practically the same as I do Mr. Rayson.

Q. Tell us how you met him?

A. I met him practically the same way, coming in and out of the cafe. I have a girl waitress who is there and I understand that they lived at the same address at one time and he used to come in to see her, pick her up from work, and I knew him as Norman. I did not know his name as Fletcher until this case.

Q. Did you ever have any business transactions of any sort with Norman Fletcher?

(Testimony of Ollie W. Kelley.)

A. No, sir.

Q. Did you ever at any time have any dealings with him [263] in heroin or any other narcotic?

A. No.

Q. About when did you first see Mr. Fletcher?

A. Some time in 1954, because he—I never met him personally until, oh, up in 1955. Just come in contact with him and someone said, "This is Norman," but I did not know his name was Fletcher.

Q. He used to come into the cafe from time to time? A. Yes.

Q. And did he come in the cleaning shop from time to time?

A. I don't remember him coming into the cleaning shop but once.

Q. I am talking about prior to August 22.

A. No.

Q. You don't remember him ever being in the cleaning shop prior to August 22?

A. No.

Q. But he used to be a frequent patron of the cafe, did he not? A. That is correct.

Q. He used to come around and see the girl that was working there from time to time, did he not?

A. He did.

Q. You were never formally introduced to him?

A. No, sir.

Q. Just happened to pick up his name as a customer of the cafe? A. That's right.

Q. Do you know Mr. Richards? A. No.

Q. You don't remember meeting him until——

(Testimony of Ollie W. Kelley.)

A. Yesterday is the first time I ever saw him.

Q. Do you know Mr. Farrington?

A. Just by sight.

Q. This gentleman here?

A. That was the one made the arrest. That was the first time I have seen him, the 7th of October.

Q. Going to the 22nd of August, do you remember seeing Norman Fletcher on that day?

A. As far as to remember the date, I don't remember the correct date, but——

Q. How many times did you see him at the La Jolla Cleaners that you recall, how many times?

A. Two times.

Q. Can you tell us the exact date of either one of the dates or both of them? A. No, I can't.

Q. It was some time in the summer or early fall of this year, was it not? [265]

A. Yes, it was.

Q. You do remember his coming to the cafe, say on or about August 22? A. To the cleaners.

Q. I mean the cleaners. A. Yes.

Q. What were you doing when he arrived?

A. I think I was reading a paper or book or something when he came in.

Q. Where were you sitting in the cleaning shop?

A. I have a counter something similar to this and I was sitting behind a counter close to the sewing machine I have in the corner in the front window.

Q. Do you remember the time of day, approximately, he came in?

(Testimony of Ollie W. Kelley.)

A. It was in the morning.

Q. You don't know what time, though?

A. No, not exact time, no, sir.

Q. Was anyone else in the cleaning shop at the time he came except you and himself?

A. No, there was not.

Q. When he came in, did he speak to you?

A. Yes, he did.

Q. What did he say?

A. He said hello, and I said hello, how have you been, [266] where have you been, I haven't seen you for quite a while.

He says, "No, I haven't been around lately."

I said, "Well, how is everything going," just like that.

Q. Just a minute. I will ask you for the conversation. A. I beg your pardon.

Q. Go ahead and relate the conversation between you and Fletcher at this time, this first trip to the cleaners.

A. I said, "How is everything going?"

He said, "Oh, not too much."

I said, "What you got on your mind this morning?" Just like that.

He said, "I come in to see if you can help me out."

I said, "Help you out how?"

He said, "To see if I can make a buy."

I said, "I don't know what you are talking about. What kind of buy?"

He said, "Some stuff."

(Testimony of Ollie W. Kelley.)

I said, "I don't know anything about it because I am in enough trouble. I thought you were, too, because I am on probation and Judge Yankwich granted me probation with the understanding not to have any conversation or association with anyone had any narcotic activities."

And so I know he just got out of trouble, someone had said, it was rumored around the streets, and he was supposed [267] to be on parole.

I said, "I am not supposed to talk to you or anyone else that had any trouble prior to my trial, and Judge Yankwich told me and give me those instructions not to talk or have any conversation with anyone that had any activities in narcotics."

Q. You knew from general reports that he had been convicted on a narcotics charge?

A. Yes, I did, just from reports.

Q. What?

A. Just from general reports, rumors in the street and things.

Q. Around that area there was a general report he had been? A. Yes.

Q. You didn't know anything about it otherwise, did you? A. No, I did not.

Q. Just what you heard, general report around the street? A. That's right.

Q. What did Fletcher say after you told him you didn't want to talk?

A. He said, "I just thought you might be able to help me." [268]

I said, "I would be the biggest fool in the world

(Testimony of Ollie W. Kelley.)

if I had any stuff to let you or anyone else have it." I said, "I wouldn't let my brother have it under the conditions."

He said, "Okay," and walked on out.

Q. How long was he there?

A. Seven or eight minutes, something like that, not over 10 minutes, I am sure.

Q. At that time did you say to him that you would put him in touch with any person or persons where narcotics might be obtained?

A. No, I did not.

Q. Did you say to him you would put him in touch with the defendant Eugene Rayson?

A. No, I did not.

Q. Did you tell him you would give him the telephone number of Eugene Rayson?

A. No.

Q. You have related all the conversation that took place between you and him at that time?

A. At that time, yes.

Q. When was the next time you saw him? You saw him once after that, I mean Fletcher.

A. Yes. I was sweeping the sidewalk, and so I never stopped sweeping. He went kind of round me, and he said, "Hello. How are you this morning?"

I said, "Okay. How are you?" And kept on sweeping. I said, "Where is Mary?" I said, "I need a new waitress. I am short a waitress."

He said, "I don't know. I haven't seen her for quite a while," and it seemed to me he was still walking.

(Testimony of Ollie W. Kelley.)

Q. Who was Mary?

A. That was the girl that formerly was a waitress at the cafe.

Q. That he used to come there to see?

A. Yes, that's right. So I don't know which way he went. I thought he went into the entrance of the hotel, because I didn't look around. I just kept on sweeping. That was the conversation at that time.

Q. How long was he there at that time?

A. Oh, say, four or five minutes, something like that.

Q. Then he walked on?

A. Kept on walking.

Q. Did he come up in a car, or do you recall?

A. I don't recall. I know he was walking, coming from the east—no—yes, coming from the east, because I was sweeping this way and he came from this direction.

Q. On the first time he came up, did he come up in a car, or do you know?

A. I don't know. I didn't see him.

Q. You didn't observe the car, did you? [270]

A. No, sir, I did not. I was sitting inside.

Q. Did you at any time call Rayson and mention to him that—well, I will withdraw that. You heard Fletcher's testimony here?

A. Yes, I did.

Q. You remember what he had to say?

A. Yes.

Q. Did you at any time give him a telephone number for Rayson?

A. No, I did not.

Q. Did you ever mention Rayson's name to him?

(Testimony of Ollie W. Kelley.)

A. No, sir. The name never was called.

Q. Did you tell him to see somebody else and give him Rayson's telephone number, or anything of that sort? A. I did not.

Q. Did you mention it at all?

A. No, sir, no conversation.

Q. Did you mention anything about narcotics that could be procured at either of these conversations? A. No, sir.

Q. From Rayson or anybody else?

A. No, sir.

Q. You told him what you said?

A. I told him what I said in the first conversation, because I was on probation and was not supposed to talk to anyone [271] or associate with anyone who had any narcotic activities.

Q. You didn't want to have anything to do with him or anybody else? A. That's right.

Q. You didn't have anything to do with narcotics, is that right? A. That's right.

The Court: May I suggest you don't try to answer the questions until after they are asked, because it is very difficult for the reporter to pick up two conversations at one time. I have got a good reporter, but you are asking the impossible.

Mr. Neblett: I am probably at fault, your Honor. by interrupting to a certain extent.

Q. Have you ever at any time had any narcotic transactions with Rayson? A. No, sir.

Q. Have you had any with anybody?

A. No, sir.

(Testimony of Ollie W. Kelley.)

The Court: Now, wait a minute. Do you understand the question?

Mr. Neblett: I think he answered too quickly, your Honor.

The Court: I am afraid he did when you said anybody at any time.

The Witness: Well, when my former trial, that was 1952—— [272]

Q. (By Mr. Neblett): But the point is, I was going to put something else in the question if you had followed the judge's advice.

The Court: You be careful as to how you answer. Don't answer too fast here because you are telling me that you never at any time have been convicted for narcotics traffic.

The Witness: Yes, in 1952, when I were convicted.

The Court: In 1952?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Neblett): Mr. Kelley, please follow the court's admonition.

A. I thought they pertained to this case.

Q. I was going to take care of it since 1952. I will re-form the question. Have you at any time had any narcotic transactions with Rayson, with Fletcher, or anybody else, since May 11, 1952?

A. No, sir.

Q. What did you say?

A. No, sir, I have not.

(Testimony of Ollie W. Kelley.)

Q. Have you at any time since May 11, 1952, discussed the question of the sale of narcotics?

A. In 1953——

Q. Wait a minute now. Let me finish. Have you at any time since May 11, 1952, discussed the question of possible [273] sale, transportation or in any manner the handling of narcotics?

A. No, sir, I have not.

Q. After Fletcher was in your cleaning shop or saw you in front of the cleaning shop on or about September 13, 1955, did you observe Fletcher from that time until you saw him here in court?

A. On what date was that?

Q. September 13th, the time you saw him on the street when you were sweeping in front of the cleaning shop. Have you seen him from that time until now, Fletcher?

A. No, I have not.

Q. Have you had any communications with him by telephone or otherwise?

A. No, sir, I have not.

Q. As I understand you, the only times you have seen him at all except in the cafe casually, as you have mentioned, were the two times that he came to your cleaning shop at 806 East Sixth Street, the first time about August 22, 1955, and the second time about September 13, 1955. Are those the only times you have seen him except in the cafe, as I understand?

A. Yes, sir, that is the only time I have seen him.

Q. Have you had any conversations with him

(Testimony of Ollie W. Kelley.)

except on the two occasions at any time since May 11, 1952? A. No, I have not. [274]

Q. Was there any call made by Fletcher upon you in addition to the two calls you have mentioned? You heard Fletcher's testimony he called by to see you again about the—well, some time after the 13th. I think he said September 22nd. Did you see Fletcher a third time that he has testified about?

A. No, I don't remember seeing him other than those two times.

Q. At either of these two conversations that you had with Fletcher, did you give Fletcher the phone number where he could reach Rayson?

Mr. Jensen: I object to that as asked and answered three times, your Honor.

Mr. Neblett: Did I ask that before?

Mr. Jensen: And in each instance he said no.

The Court: He said no, he didn't give any telephone number.

Mr. Neblett: You may cross examine.

Cross Examination

Q. (By Mr. Jensen): Mr. Kelley, you say you have only known Rayson for about a year and a half, or a year, is that correct?

A. Something like that.

Q. Never had any conversations with him other than just casual ones around your place of business? [275] A. That's right.

(Testimony of Oliver W. Kelley.)

Q. Keep your voice up so I can hear you, Mr. Kelley. A. Thank you.

Q. You have had no business transactions with him? A. None whatsoever.

Q. Of any kind, type or description, is that right? A. Sir?

Q. None whatever, is that your answer?

A. That's right.

Q. You have done some cleaning.

A. That is the only transaction, cleaning.

Q. You have taken cleaning from him?

A. Yes.

Q. Isn't that a business transaction?

A. Yes, it is.

The Court: Also he came into the restaurant and ate, and I suppose that is a transaction. That isn't what was in the mind of the questioner. I am quite aware, and not in the mind of the witness.

Mr. Jensen: Let's find out what was in his mind.

Q. What do you mean by a business transaction, Mr. Kelley?

A. I thought you were pertaining to a narcotic transaction, this particular case.

Q. I think you were asked by your lawyer and by myself [276] both whether you had any kind of business transaction.

A. Well, as I say, in my mind the transaction was in this particular case, not in the business, the cleaning or cafe.

Q. Do I understand your testimony to be now,

(Testimony of Ollie W. Kelley.)

all you are saying is you had no transactions with Rayson in regard to this case?

A. That is correct.

Q. You have had other transactions with him?

A. Cleaning and eating.

The Court: Let me ask you this. You haven't had any transactions with him other than eating and cleaning, is that right?

The Witness: Yes, sir, your Honor.

The Court: All right.

Q. (By Mr. Jensen): You say you have had no business transactions with Fletcher with the same exception there about eating and cleaning.

A. I haven't had any cleaning.

Q. Did you ever do any cleaning for him?

A. No, but he has eaten in the place. I have seen him in there quite a few times, and I have a parking lot across the street.

Q. Wait a minute, Mr. Kelley. Answer my question, if you will, please, and then if you have an explanation, I will [277] give you opportunity to make it. Have you ever had any cleaning from Mr. Fletcher?

A. Not that I remember.

Q. You say the first time you saw Mr. Fletcher was in 1954?

A. Yes, it was.

Q. You didn't see him prior to that time?

A. No, I did not, not to know him.

Q. You never saw him in 1953?

A. Not to know him.

Q. He didn't come to your place of business and talk to you in October 1953 or thereabouts?

(Testimony of Ollie W. Kelley.)

A. I don't remember him until 1954.

Q. Have you ever had any conversations with Fletcher, I mean excluding the times when you have seen him just to see him? Have you ever at any time in your life had any conversations with Mr. Fletcher other than these two you have testified about where he came to your place of business in the fall of this year? Have you had any others?

A. I don't remember any others other than maybe in the cafe, hello, good morning, or something, how are you?

To tell the truth, I did not know him—the girl was working there approximately a year before I knew who he was.

Q. When did you first learn his name, Mr. Kelley?

A. Well, his full name, I just learned that in this [278] case.

Q. When did you first learn his first name?

A. When this girl was working there.

Q. When was that? A. That was in 1954.

Q. Some time in 1954? What time?

A. I don't remember the time.

Q. Was it spring, summer, fall, winter?

A. It possibly could be in the fall.

Q. In the fall of 1954.

The Court: Now, counsel, let's let the witness answer. It is hard on my reporter for you to break in.

Mr. Jensen: That is true, your Honor, but this witness wants to go on beyond the scope of the examination.

(Testimony of Ollie W. Kelley.)

The Court: I caution the witness, don't be too fast, take it a little slower.

Q. (By Mr. Jensen): You say you first learned Mr. Fletcher's first name in the fall of 1954?

A. It was in the year 1954. I don't know whether spring, summer, fall or winter, but it was 1954.

Q. How do you place it in 1954?

A. Because the girl was working there at that time. She hasn't worked since the last of 1954.

Q. Was she working there in the summer of 1954? A. Yes. [279]

Q. Was she working in the spring of 1954?

A. I don't recall. I would have to go back and look at my records.

Q. Was she an employee of yours? A. Yes.

Q. How long did she work for you?

A. I couldn't tell you the exact time on that. I would have to look back at the payroll and check back to tell when she started and when she quit.

Q. Did she work for you for over six months?

A. Yes, she did.

Q. More than a year? A. I couldn't say.

Q. What is your best estimate at this time?

A. I would say six months.

Mr. Neblett: Pardon me. If the court please, I think possibly the District Attorney is catching up with the witness a little bit and not giving him a chance to finish.

The Court: That's right. Let's slow down a little bit.

Q. (By Mr. Jensen): Mr. Kelley, the first con-

(Testimony of Ollie W. Kelley.)

versation that you had with Mr. Fletcher, can you fix the date for us? A. I cannot.

Q. Was it this year?

A. Yes, I think it was this year.

Q. Was it in the spring, summer or fall of this year? [280]

A. Possibly it would be summer, I presume.

Q. Is that your memory of it?

A. That is my memory. August, if it was August, as the record shows from the evidence——

Q. Never mind the record, Mr. Kelley.

A. That is the only thing I could by. I couldn't tell you the date. The only thing I can say——

Q. Just a minute, Mr. Kelley. All I want is your memory. What is your best memory that you have as to the time it occurred?

A. I couldn't give you no time on that, because I know it was before September. It was not in September, because I can tell you practically what I was doing in the month of September.

Q. Can't you tell us what you were doing in the month of August? A. No, I can't.

Q. What is so different about August and September?

A. The hunting season opened and I am a fanatic on hunting. The 3rd of September the dove season opened, and it is 30 days.

Q. That is a large landmark in your mind, the 3rd of September? A. Yes.

Q. Did this conversation occur before that date?

A. Yes, it did.

(Testimony of Ollie W. Kelley.)

Q. Is your memory it occurred some time before that time or just a very short time?

A. I don't remember just when it was, a week or two, or it could be a couple of weeks.

Q. Do you recall the time of day?

A. It was in the morning because I was sweeping the sidewalk—not sweeping the sidewalk, but I just got through with cleaning up the place and was sitting down reading the paper.

Q. Were you sweeping the sidewalk on the first occasion? A. No.

Q. We are talking about the first conversation. Let's go back to the first conversation. Where were you when you first saw Mr. Fletcher?

A. Sitting in the cleaners.

Q. I think you said you were sitting behind the counter, is that correct? A. Correct.

Q. You said something about a sewing machine that I didn't catch.

A. I have a sewing machine right in the corner. The counter is like this and in the window is something like that partition where the machine is sitting between this end of the [282] counter. There is about that much space to go between the machine and counter, and I was sitting where the reporter is.

Mr. Jensen: May the record indicate the counter was in front of him and the sewing machine was to his right?

The Witness: To my left.

Q. (By Mr. Jensen): I think you indicated to your right. A. May I show you how?

(Testimony of Ollie W. Kelley.)

The Court: Yes.

The Witness: Here is the counter here. I am sitting right here and the entrance is here. The machine is sitting right here. That would be to my left.

Q. (By Mr. Jensen): All right. Will you resume the stand, Mr. Kelley? Where was the window in relation to you, in front of you, beside you, or——

A. My side.

Q. Which side? A. Left.

Q. When Mr. Fletcher talked to you, where was he? Was he in front of you?

A. He was about where the judge is sitting.

Q. Where was he in relation to you as you sit in the room? Was he in front of you, to your right or to your left?

A. The same position as the reporter and the judge has.

Q. That is to your left?

A. That would be—I was sitting here. That would be [283] to my right.

Mr. Jensen: Does your Honor understand he indicates the right?

The Court: I don't know what difference it makes.

Q. (By Mr. Jensen): You say Mr. Fletcher came in and he wanted to purchase some stuff. Was that the word he used? A. That is correct.

Q. What did you understand him to mean by the word stuff?

A. I understood him to mean narcotics.

(Testimony of Ollie W. Kelley.)

Q. Any particular kind of narcotics?

A. Well, no, no particular kind. Stuff pertains to narcotics, as far as I know.

Q. Do you use the word to mean heroin?

A. No, I do not.

The Court: What term do you use when you talk about marijuana?

The Witness: Well, your Honor, I don't even talk about marijuana.

The Court: So stuff means everything?

The Witness: Every kind of narcotic, I would think.

The Court: All right.

Q. (By Mr. Jensen): You say you had a later conversation with Mr. Fletcher, is that correct?

A. That is correct. [284]

Q. Do you recall how much later than the first it was? A. No, I do not.

Q. Was it after the hunting season opened on September 3rd?

A. Well, to be honest and truthful about it, I don't remember, because it was after the 3rd of the month, I know, because I had been on—that was each week and in September I were hunting, every Saturday and Sunday, and I think this was the second week after I had started hunting.

Q. Do you recall it was among the week-ends that you went hunting?

A. After the week-end.

Q. On this occasion, I think you have testified you were sweeping the street.

(Testimony of Ollie W. Kelley.)

A. The second time, yes, I was.

Q. What did Mr. Fletcher say to you on that occasion?

A. I don't remember. Just said, "Hello. How are you? How's everything?" And he was walking and I was sweeping.

Q. I am just asking you——

Mr. Neblett: I think the witness should be allowed to finish the answer.

The Court: Just a minute. The question was what he said, not what he did. Just say what he said to you.

The Witness: We spoke, and I said, "How are you?" And he said, "Fine. How are you?" He was walking. He didn't [285] even stop, because I said, "Where is Mary?" And he said, "I haven't seen her for some time."

I said, "I need a waitress."

He said, "I haven't seen her for some time," and I kept sweeping and he kept walking.

Q. (By Mr. Jensen): Did he mention the word stuff to you on that occasion?

A. No, he did not.

Q. In either of these conversations, was the defendant Rayson's name mentioned?

A. No, it was not.

Q. In either of these conversations, did Mr. Fletcher tell you his telephone number?

A. No, he did not.

(Testimony of Ollie W. Kelley.)

Q. I think you testified you have never had any discussions about narcotics with anyone since May 1952, is that correct? A. Correct.

Q. You did have a discussion with Mr. Fletcher on this first conversation about stuff, which you say is narcotics?

A. That wasn't a conversation. He asked me about it, if I knew where he could buy some stuff, get some stuff, and I said, "I don't know anything about any stuff and don't want to talk about it, because I have instructions not to talk about it."

Q. Was that a conversation about narcotics?

A. If you think it is a conversation, it is conversation.

Q. Was it about narcotics?

A. I guess you would say it is, then.

Q. Then you are mistaken.

Mr. Neblett: Your Honor, I think this is a wrangle with the witness.

The Court: Sustained. It is argument.

Q. (By Mr. Jensen): You said you have never had any narcotic dealings with Rayson at all, is that correct? A. Correct.

Q. Ever at any time?

A. That is correct.

Q. You pleaded guilty, did you not, before Judge Yankwich of this court?

Mr. Neblett: If the court please, the record is here.

Mr. Jensen: Well, may I ask him?

(Testimony of Ollie W. Kelley.)

The Court: Yes, you can ask him if he has been convicted of a felony.

Q. (By Mr. Jensen): Mr. Kelley, did you plead guilty to possession of narcotics?

A. I did not.

Q. Were you charged with possession of a narcotic? A. I was. [287]

Q. Were you convicted? A. I was.

Q. After trial? A. Yes.

Q. When did that occur?

A. When I was convicted?

Q. Yes. A. May 11, 1953.

Q. 1953? A. Yes, sir.

Q. As a result of that conviction, did you serve a term, were you imprisoned? A. No, sir.

Q. You were placed on probation?

A. Yes, sir.

Mr. Jensen: I don't believe I have any further questions, your Honor.

Mr. Neblett: I don't think we have any redirect, your Honor.

The Court: Step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Neblett: Eugene Rayson. [288]

EUGENE RAYSON

one of the defendants herein, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you take the stand and state your name, please?

The Witness: Eugene Rayson.

Direct Examination

Q. (By Mr. Neblett): Mr. Rayson, you are one of the defendants in this action now pending before this court? A. I am.

Q. Where do you live now?

A. 624 East 97th Street.

Q. Have you been living there for a year or more? A. Yes, sir.

Q. Do you know Norman Fletcher?

A. I do.

Q. How long have you known Norman Fletcher?

A. Oh, a little over a year.

Q. How did you meet him?

A. I met him by his wife, which I thought to be his wife.

Q. Were you introduced to him by the woman that you thought was his wife? [289]

A. Not formally.

Q. Did she tell you who he was? A. Yes.

Q. Was he there?

A. I beg your pardon?

Q. Was Fletcher there at the time?

A. Yes, he was there.

(Testimony of Eugene Rayson.)

Q. Did you see Fletcher on the 13th of September? A. No.

Q. How long have you known the defendant Ollie Kelley?

A. Oh, about a year and a half, almost two years.

Q. How did you get in contact with him?

A. I used to go down to the cafe and eat there, and I used to carry my cleaning over to his shop across the street.

Q. Did you carry cleaning to the La Jolla Cleaners? A. Yes.

Q. And were you a patron of the cafe, too?

A. That's right.

Q. How often were you accustomed to go in the cafe, say in a month? A. Every night.

Q. Every night? A. Every night.

Q. Used to go there and eat?

A. Yes. [290]

Q. And you ran into Kelley that way, is that how you met him? A. Yes.

Q. And at the cleaning shop, too?

A. Yes, sir.

Q. You first met him in the cafe, is that right?

A. That's right.

Q. Do you know Officer Farrington?

A. Yes, sir.

Q. When did you meet him?

A. March this year.

Q. In March of this year?

A. That's right.

(Testimony of Eugene Rayson.)

Q. Do you know Officer Landry? A. Yes.

Q. How long have you known him?

A. The same time.

Q. March of this year?

A. That's right.

Q. Did you ever have any conversation, telephone or otherwise, with Ollie W. Kelley, your co-defendant in this case, relating to narcotics?

A. No.

Q. Has the subject ever been mentioned between you and Kelley in any way? [291] A. No.

Q. The subject of narcotics?

A. No.

Q. You never had any talks with him?

A. No, sir.

Q. Did Kelley call you and give you that number that has been testified to here, the number which is said to be Mr. Richards' number?

A. No, sir.

Q. You remember that in the testimony of Mr. Richards and Mr. Fletcher, do you not?

A. Yes, sir.

Q. Did Kelley ever talk to you about Fletcher or give you any information at all about Fletcher?

A. No, sir.

Q. You did meet Fletcher, did you not, on or about the 14th of September this year?

A. Yes, sir.

Q. What were the circumstances? Tell us about that meeting.

A. You mean tell you what the meeting was for?

(Testimony of Eugene Rayson.)

Q. Yes. Did you have some conversation with Fletcher about the meeting before you met with him? A. Yes, sir.

Q. Where was this conversation held? [292]

A. He called me in the recreation shop.

Mr. Jensen: I am going to object to this, your Honor, unless we have a time and place and circumstances.

The Court: He is trying to lay the foundation. You have got to start somewhere. Was this on the 13th or 14th?

The Witness: This was on the 14th.

The Court: What time of the day was it?

Q. (By Mr. Neblett): You had what you call a smoke shop, didn't you? A. Yes.

Q. Where was this located?

A. 3326 South Main.

Q. Did Fletcher ever come into that smoke shop? A. Yes, sir.

Q. When was the first time he ever was in there that you recall?

A. I don't know. Around the last of June.

Q. Did he come in there more than once?

A. Yes, sir.

Q. Quite often? A. Yes, sir.

Q. Was he one of your customers?

A. Well, he used to come there and play dominoes and cards, like we all do.

Q. And buy smokes, or whatever you sold in this place? [293]

A. Sold soft drinks and sandwiches.

(Testimony of Eugene Rayson.)

Q. Tobacco, cigarettes, cigars?

A. Yes, sir.

Q. You say you saw Fletcher on the 14th of September? A. That's right.

Q. Prior to the 14th of September, had you had a discussion with Fletcher?

A. A discussion?

Q. Yes. Did you have a talk with him prior to the 14th? A. Yes, sir.

Q. Where was that talk held?

A. At 3326 South Main.

Q. That is what we call the smoke shop, is it?

A. That's right.

The Court: How much prior to the 14th?

Mr. Neblett: I will ask him, your Honor.

Q. How long before the 14th was that?

A. Oh, about 12 days.

Q. Was there anyone else present when you were talking to him?

A. No, because he asked me to come outside.

Q. You said you saw him in the smoke shop. Was that in front of the smoke shop?

A. I was on the inside when he came, and he told me to [294] come on the outside, he wanted to speak with me a minute.

Q. Did he drive up in a car and call you out?

A. Yes, he drove up in his car.

Q. And called you out? A. Yes.

Q. Did he walk in the shop and ask you to come out? A. Yes, sir.

Q. What did Fletcher say to you at this time?

(Testimony of Eugene Rayson.)

Wait a minute. Was there anyone else present when he was talking to you except you and Fletcher?

A. No.

Q. Tell us what happened at that conversation? What was said by him and by you?

A. Well, he told me that he was in a little tight and told me that he went out the night before to a black-jack game and he got broke and had pawned his pen and ring to some fellows that he didn't want to have them, and he asked me if I would let him have \$50 to get them out, that he had all the money but the \$50 to get the ring, and he would give it back to me in about eight or nine days.

I told him I didn't have it with me. I told him I had my car payment money at home and I would let him have it if he would have it back by the 15th, because that is when my car payment was due.

Q. You were buying a car on payments? [295]

A. Yes, sir.

Q. What were your payments a month?

A. \$84.53.

Mr. Jensen: I object to this.

Q. (By Mr. Neblett): You told Fletcher you were buying this car on payments?

Mr. Jensen: I object to this as being leading. Let the witness state what the conversation was.

The Court: Well, I think it is leading.

Q. (By Mr. Neblett): Did you have a discussion with Fletcher about your car payment?

A. That was the only discussion we had. I told him I had the money to make my car payment due

(Testimony of Eugene Rayson.)

on the 15th, and he told me he would give it back to me before my car payment was due.

Q. When did you next hear from him?

A. I heard from him on the 14th.

Q. Did he call you or did you call him?

A. He called me.

Q. Do you know where he was when he called you?

A. No, I don't know where he was.

Mr. Jensen: Object to that.

Q. (By Mr. Neblett): Did he say where he was when he called you?

Mr. Jensen: I object to that. I understand the witness [296] to say he called Fletcher.

The Witness: No.

Mr. Neblett: No.

Mr. Jensen: Then I am mistaken. I am sorry. Could I have the prior answer?

(Answer read.)

Mr. Jensen: I am sorry. I misunderstood.

Q. (By Mr. Neblett): Speak up a little bit, will you, Mr. Rayson? A. Okay.

Q. Do you remember what time of the day it was when he called you?

A. On the day of the 14th?

Q. Yes.

A. It was around 4:00 o'clock.

The Court: In the afternoon?

The Witness: In the afternoon.

Q. (By Mr. Neblett): What did he say?

A. He called and he said, "Hello."

(Testimony of Eugene Rayson.)

And I said, "Hello."

Then he said, "You know who this is?"

I said, "No. Who is it?"

He said, "It's Norman."

Then I said, "Man, I'm sure glad you called, because tomorrow is the day for me to pay my car note." [297]

He said, "Okay. I'm ready."

I said, "Where are you?"

He said, "I'm on 56th Street."

I said, "I'm going home now. I will meet you at 56th and Broadway."

He said, "Okay."

Then I drove from Jefferson and Main to 56th and Broadway, turned to my right. He wasn't there——

Q. Just a minute until I cover that with a question. You told us all the telephone conversation now that you had with him before you said that you would meet him at 56th and Broadway?

A. That's right.

Q. You told him you were going home?

A. That's right.

Q. Where did you live?

A. I lived at 97th Street.

Q. 97th and what?

A. 97th Street, east of Avalon.

Q. Did you say you would meet him on the way home at 56th and Broadway?

A. Yes. I told him I was going home and I asked him where was he, and he said he was on

(Testimony of Eugene Rayson.)

56th Street, and I said meet me at 56th and Broadway, because that was on my way home.

Q. What did you do then after you talked to him? [298]

A. Then I left to meet him there at 56th and Broadway.

Q. You left and drove to Broadway and 56th?

A. Yes.

Q. What did you do then?

A. When I got to 56th and Broadway, I turned to my right and he wasn't there. So then I turned around in the middle of the block and came back to the corner, and when I was almost to the corner, then he turned the corner coming from the south, and he turned the corner to the left and he stopped. and I got out of my car and walked over to his car.

Then I asked him, "How's everything?"

He said, "Oh, they treat me pretty rough," and then he gave me my money and I got in my car and went home.

The Court: How much money did he give you?

The Witness: \$50 he borrowed from me.

Q. (By Mr. Neblett): Did you get in his car?

A. No.

Q. Just walked up to the——

A. Just walked up to the driver's side.

He had the window open or the door open?

A. The windows were down.

Q. The windows were down?

A. Yes.

(Testimony of Eugene Rayson.)

Q. Did you have any conversation with him at that time?

A. No, only just, "How are you," and "How is everything?" [299] He said, "They are treating me pretty rough." That's all.

Q. Have you seen him from that date to this until we came to court? Have you seen Fletcher since then? A. No.

Q. That is the last time you saw him?

A. That's right.

Q. Until, of course, we got in court here and you saw him? A. Until yesterday.

Q. You have already testified, as I understand it, that Mr. Kelley did not give you any number and particularly didn't give you Pleasant 1-6408, is that right? A. That's right.

Q. Did you ever at any time call Pleasant 1-6408? A. No.

Q. Did you ever at any time call Fletcher?

A. No.

Q. On the telephone at any place?

A. No.

Q. The only telephone conversation you had, then, I understand you, is the one you had with him on the 14th of September when he called you and you made an arrangement to meet him at 56th and Broadway, is that right?

A. That's right. [300]

Q. You have no other telephone calls at all that you had? A. No.

Q. At this conversation that you had with

(Testimony of Eugene Rayson.)

Fletcher when he called you at the smoke shop, was anything said about narcotics? A. No.

Mr. Jensen: I object. Is there any evidence in the record of a telephone conversation at the smoke shop?

Mr. Neblett: His testimony.

Mr. Jensen: No. He has talked about in person.

The Court: No. It was in person at the smoke shop.

Mr. Neblett: If I haven't asked him that, I will ask him.

Q. When you said a while ago that Fletcher called you in the afternoon of the 14th of September, he called you at the smoke shop, did he not?

A. That's right.

Mr. Jensen: All right.

Mr. Neblett: That's what I understood him to say.

The Court: All right.

Q. (By Mr. Neblett): That is when the arrangement was made to meet him at 56th and Broadway? A. That's right.

Q. When you left the meeting with Fletcher at 56th and [301] Broadway, where did you go?

A. I went home.

Q. Where is home again?

A. 624 East 97th Street.

Q. Do you have a housekeeper or somebody that lives there with you? A. Yes, sir.

Q. Who is that? A. Larue Williams.

Q. Was she there that night? A. Yes.

(Testimony of Eugene Rayson.)

Q. Did you eat dinner at home?

A. Yes, sir.

Q. Did she cook for you? A. Yes, sir.

Q. Where did you go that evening after you got home?

A. I stayed home that night. I did not go anywhere.

Q. Did you go out at all? A. No.

Q. What time did you arrive home?

A. I got home between 4:30 and 5:00.

Q. That is after you left 56th and Broadway?

A. That's right.

Q. Did you stay there all night?

A. That's right. [302]

Q. What do you have there? A house?

A. Yes, sir.

Q. How long have you had this house?

A. November last year.

The Court: May I ask a question?

Mr. Neblett: Yes, your Honor.

The Court: You got this \$50 from Fletcher on the afternoon of the 14th?

The Witness: Yes, sir.

The Court: When did you make your car payment?

The Witness: I made it the next morning.

The Court: Where did you make it?

The Witness: At the Bank of America.

The Court: Whereabouts?

The Witness: On 110th and Main.

The Court: I would like to have it verified

(Testimony of Eugene Rayson.)

whether or not he made that. Have you got any evidence here?

Mr. Neblett: We have it here, your Honor. Your Honor please, pardon me. I put it in the file here myself, the car payment book, but I can't find it right now, but we will get it if you give us a minute.

The Court: Maybe you can find it while the government is cross examining, if you are through with this witness. Have you any other questions?

Mr. Neblett: I was going to ask him one question. [303]

Q. Where was the car financed? With the Bank of America? A. Yes, sir.

Q. And you made that payment at—do you remember the branch? A. 110th and Main.

Mr. Neblett: We will find it, your Honor, but he can go ahead with his cross examination.

Cross Examination

Q. (By Mr. Neblett): Mr. Rayson, how long have you lived at 624 East 97th Street?

A. Since November last year.

Q. November of 1954? A. That's right.

Q. Did you say you have a housekeeper down there? A. Yes.

Q. What is her name? A. Larue Williams.

Q. Larue Williams? A. Yes.

Q. Does she prepare your meals down there?

A. Yes, sir.

Q. I thought you testified a little earlier that

(Testimony of Eugene Rayson.)

you had dinner most every evening at Mr. Kelley's cafe on East [304] Sixth Street.

A. No. That was when I first met him. He asked me that.

Q. When did you give up that practice?

A. August of 1954.

Q. After that you didn't eat there any more except occasionally? A. Not regularly.

Q. Not regularly. Now, let me ask you——

Mr. Neblett: Your Honor, may one of us be excused to call my secretary to see where I put this payment book?

The Court: All right.

Mr. Jensen: May I continue?

The Court: Go ahead.

Q. (By Mr. Jensen): Did you see Mr. Fletcher during the month of August 1954?

A. The month of August? Well, if I did, it was the last two or three days in August.

Q. Is that the occasion of his talking to you about a loan? A. That's right.

Q. Other than that occasion, did you see him at all during the month of August? A. No.

Q. Did you talk to him on the telephone? [305]

A. No.

Q. Do you ever recall an occasion when he was driving down the road in August or thereabouts when you waved to him and he waved to you? You were on the street?

A. That was at 56th and Long Beach. I remember seeing him passing the street.

(Testimony of Eugene Rayson.)

Q. You do remember that. Will you fix the time of that?

A. I don't know. That was before he asked me about the loan.

Q. That was before the loan? A. Yes.

Q. Could it have been in August?

A. Possibly.

Q. Prior to that had you seen him in July or June or May 1955? A. No.

Q. All right. Now, what time of day was it when he spoke to you about borrowing some money?

A. It was around 5:00 o'clock that afternoon.

Q. That, you said, was about 12 days prior to September 14th. A moment ago I think you stated it might have been in the latter part of August.

A. Yes.

Q. The last part of August or first part of September. [306] A. That's right.

Q. Is that the time of that conversation?

A. It must have been the last part of August, because it was before Labor Day.

Q. Did you see him or talk to him again between that date and the afternoon of September 14th when he paid this money back to you? Did you either see him or talk to him by phone?

A. What date now?

Q. From the time he borrowed the money until the day he paid it back.

A. I didn't see him from the time he borrowed it until he paid it back.

Q. Did you have any telephone conversations in

(Testimony of Eugene Rayson.)

that interval between when he borrowed the money?

A. No.

Q. And the time he paid it back?

A. No.

Q. Other than the one where you set up the meeting for the payment of it back?

A. I don't understand what you mean by setting up a meeting.

Q. I will rephrase the question. Prior to his paying the money back, you had a telephone conversation with him, did you not? [307]

A. Before he paid the money?

Q. Yes. A. Yes, on the 14th.

Q. You have testified, as I recall, that that telephone conversation occurred at approximately 4:00 p.m. in the afternoon on September 14th.

A. Around 4:00, yes, between 4:00 and 4:30.

Q. You later testified you got home between 4:30 and 5:00. A. That's right.

Q. Other than that telephone conversation, have you had any other telephone conversations with Mr. Fletcher since August of this year?

A. No.

Q. You didn't call him at 10:00 o'clock in the morning on September 14th? A. No.

Q. You didn't call him around noon of September 14th? A. No.

Q. You didn't call him later around 6:30 on September 14th? A. No.

Q. Did you meet him on Hoover and 58th Street? A. No.

(Testimony of Eugene Rayson.)

Q. Let me finish the question. On September 14th in [308] the forenoon, some time prior to noon?

A. No.

Q. You did not?

A. No.

Q. What kind of car do you own?

A. It is a green Mercury Montclair.

Q. 1955 Montclair model?

A. That's right.

Q. Were you driving it on the 14th?

A. Yes, sir.

Q. You had it in your possession all that day?

A. Yes, sir.

Q. Didn't loan it to anybody?

A. No.

Q. It was never missing at any time during the day so far as you know?

A. So far as I know, no.

Q. Did you have a meeting with Mr. Fletcher at approximately 1:00 or 1:30 in the afternoon on Main Street or in the vicinity of Main Street and 57th?

A. When?

Q. On September 14th at about 1:30 p.m. in the afternoon?

A. No.

Q. Did you have a meeting with him at any time around [309] that hour?

A. The only meeting I had was the one I told you about between 4:00 and 4:30.

Q. You have testified, I believe, you did not call him at 6:30 p.m. on September 14th?

A. I did not.

Q. Now, Mr. Rayson, do you fix the date of

(Testimony of Eugene Rayson.)

September 14th in your mind because it was prior to your car payment becoming due?

A. That's right.

Q. What did you make this payment with, cash, check, or otherwise? A. Cash.

Q. Do you recall the denomination of the bills, what they were?

A. \$84.53. I don't remember the bills.

Q. Do you recall what kind of money it was that Fletcher gave you at 4:00 p.m.?

A. He gave me \$50.

Q. Do you recall what money? I'm sorry. Was it all in bills? A. Yes.

Q. Several bills?

A. Well, I can't remember if there were tens or fives.

Q. But there were several of them? [310]

A. It amounted to \$50. There possibly could have been a ten and a twenty. I know he gave me \$50.

Q. Have you ever had any conversations with Mr. Farrington? A. Have I?

Q. Yes.

A. None other than when they arrested me.

Q. You don't recall you ever talked to him on any other occasion?

A. When they arrested me, that is the only time.

Mr. Neblett: If your Honor will excuse me just a minute, we have located the missing payment

(Testimony of Eugene Rayson.)

book. My secretary will have it here in a few moments.

Q. (By Mr. Jensen): This smoke house where you do business—is that what you call it?

A. Recreation center.

Q. Recreation center. Where was that again, please?

A. 3326 South Main Street.

Q. 3326 South Spring?

A. M-a-i-n, Main Street.

Q. South Main. My ears are playing tricks on me. I'm sorry. When did you go to work? When did you first arrive at that location on the 14th, do you recall?

A. The time of day?

Q. Yes, what time of day did you first get there? [311]

A. I got there about 12:00 o'clock.

Q. Where had you been prior to that time?

A. Home.

Q. Is it correct, then, that you left home some time just before noon and drove directly to this place at 3326 Main?

A. That's right.

Q. Did you remain there until you received this telephone call from Fletcher a little prior to 4:00 p.m.?

A. Well, I was in and out.

Q. When you left, did you leave on foot or did you move your car?

A. I did not move my car, no.

Q. In other words, you left your car there from when you arrived at 12:00 until you left to meet Mr. Fletcher at 56th and Broadway, is that right?

A. That's right.

(Testimony of Eugene Rayson.)

Q. You left your car there all that time?

A. No. My car wasn't parked in front of the place.

Q. Wherever you put your car, it was there from 12:00 to 4:00 p.m., is that right?

A. No, that is not right. Let me tell you what happened. I stopped off to get a wash.

Q. What time was that?

A. On my way up there to the shop. [312]

Q. You mean in the morning?

A. Around noon time, and I left it to get it washed, and I went back to get it and drove it in front of the place.

Q. What time was it you left it off to be washed?

A. On my way up to the smoke shop.

Q. Would that be around noon?

A. That's right.

Q. What time did you pick it up?

A. Oh, about 3:00 o'clock, 2:00 or 3:00 o'clock.

Q. When you picked it up at 3:00 o'clock, where did you take it? A. In front of the place.

Q. In front of the recreation hall?

A. That's right.

Q. Then some time prior to 4:00 o'clock, you got in your car and drove down to 56th and Broadway, and from there you drove on home, is that correct? A. That is correct.

Q. You were driving the same car?

A. That's right.

(Testimony of Eugene Rayson.)

Q. Did your car stay at your house all that evening? A. Sure.

Q. Didn't loan it to anybody? A. No.

Mr. Jensen: I don't believe I have any further questions. [313]

Mr. Neblett: I don't believe we have any re-direct.

The Court: You may step down.

(Witness excused.)

The Court: Do you have any other testimony?

Mr. Neblett: No, your Honor.

The Court: Except this book?

Mr. Jensen: I will agree counsel can put the witness back on the stand for the purpose of identifying the exhibit.

The Court: If you have the car payment book here, I suppose that's pretty good evidence a payment was made. Do you have any other testimony?

Mr. Jensen: Have the defendants rested?

The Court: Yes, they have rested.

Mr. Jensen: I would like to call Sergeant Landry.

The Court: All right, Sergeant.

ALGY F. LANDRY

called as a witness by and on behalf of the government in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand and state your name, please.

The Witness: Algy F. Landry. A-l-g-y. [314]

Direct Examination

Q. (By Mr. Jensen): Will you state your full name? A. Algy F. Landry.

Q. What is your occupation, Mr. Landry?

A. I am Deputy Sheriff assigned to the Sheriff's Narcotics Squad, Los Angeles County.

Q. How long have you been employed by the Sheriff of Los Angeles County?

A. Approximately nine years.

Q. Are you acquainted with the defendant Rayson? A. Yes, sir, I am.

Q. What is the date of the first time that you recall having seen him?

A. Having met him was on March 10, 1955.

Q. Other than meeting him, had you seen him before and known him? A. Yes, sir, I had.

Q. For how long a period of time?

A. A short time prior to that date.

Q. I call your attention to September 14, 1955. I will ask you whether or not you saw the defendant Rayson on that date.

A. Yes, sir, I did.

Q. Would you state what time of day it was that you [315] first saw him?

(Testimony of Algy F. Landry.)

A. I first saw Mr. Rayson at approximately 10:25 a.m. on the morning of September 14, 1955.

Q. And where?

A. As he came out of his location, 624 East 97th Street.

The Court: What do you mean by location?

The Witness: His house at that location.

The Court: His house?

The Witness: Yes.

Q. (By Mr. Jensen): How far away were you at that time?

Mr. Neblett: If your Honor please, we object to this on the ground it is not proper redirect examination.

Mr. Jensen: This is rebuttal, your Honor.

The Court: Not only that, but I suggested that they do not call these witnesses when they were presenting their main case because I thought maybe it would be cumulative. You can go ahead. I will overrule the objection.

Q. (By Mr. Jensen): You saw him at 624 East 97th Street, is that your answer? A. Yes, sir.

Q. How far away were you at the time you saw him?

A. Approximately a half block east on 97th Street.

Q. Were you in the company of anyone else at that time? A. I was by myself. [316]

Q. What did you do after you first saw him? What happened?

A. I observed Mr. Rayson come out of that

(Testimony of Algy F. Landry.)

house at that location, enter a 1955 Mercury, green in color, and he backed out of the driveway. This car was, incidentally, in the driveway. Backed out of the driveway and proceeded north on——

Q. Not too much detail. Did you follow him?

A. Yes, sir.

Q. And how far did you follow him? Did you ever observe him stop?

A. No, sir, except for traffic signals.

Q. Did you ever see him alight from his vehicle? A. No, sir, I did not.

Q. For what period would you say you followed him?

A. I followed him approximately 15 minutes and then I lost him.

Q. Where were you at the time that you lost him?

A. I lost him near Budlong and Slauson, in that vicinity.

Q. That would be, then, at approximately what time?

A. I lost him approximately 10 minutes to 11:00.

Q. A.m.? A. In the morning, a.m.

Q. Did you have the occasion to see the defendant [317] Rayson again that day?

A. Yes, sir, I did.

Q. When was that?

A. That was approximately 11:00 a.m., 10 minutes later, I observed Mr. Rayson.

Q. Where was he at the time that you observed him on that occasion?

(Testimony of Algy F. Landry.)

A. He was sitting in Mr. Fletcher's car at that time.

Q. Where?

A. The car was facing east on 57th Street, which would be on the south side of the street, in between Hoover and Broadway.

Q. How far were you away from the defendant Rayson on that occasion?

A. I was just across Hoover, approximately a half block.

Q. Did you have any difficulty seeing him at that time?

A. No, sir. I used visual aids, binoculars.

Q. What power were those binoculars?

A. They were 8 by 35 power, or whatever that means.

Q. Have you an estimate in feet as to the distance you were away from him at that time?

A. I would say approximately—I would say 100 yards or approximately 300, 400 feet. [318]

Q. Did you keep him under observation for some time?

A. For a short time after he re-entered his car.

Q. How long in total time?

A. Approximately two minutes after he re-entered his car and started up.

Q. I think you misunderstand me. From when you first saw him on 57th just off Hoover until you last saw him, what was the lapse of time?

A. I would say approximately five minutes.

Q. Did he leave that vicinity in his vehicle?

(Testimony of Algy F. Landry.)

A. Yes, sir, he did.

Q. Did you attempt to follow him?

A. Yes, sir, I did.

Q. Did you in fact follow him for a ways?

A. I followed him a short ways, sir.

Q. Would you tell us approximately how long you followed him on that occasion?

A. After he left this location, Mr. Rayson proceeded east on 57th Street, made a right turn on to Hoover, proceeded to Slauson, made a right turn on Slauson going—that would be west on Slauson, and made a left turn, I believe it was, at Broadway, at which time I was approximately one block behind him, and I missed the signal, and that is the last time I saw Mr. Rayson. He had turned into Broadway and was going south on Broadway. [319]

Q. Did you have occasion to see him at a later time on that same date, September 14th?

A. Yes, sir, I did. Pardon me. Let me say no, sir, I don't believe I saw him again that date, on the 14th.

Mr. Jensen: I don't believe I have any further questions.

The Court: May I ask a question?

Mr. Jensen: Yes, certainly you may.

The Court: Did you see Rayson on the 15th?

The Witness: No, sir. I didn't see Rayson on the 15th.

The Court: You are positive you saw Rayson in Fletcher's car at approximately 11:00 o'clock on the 14th?

(Testimony of Algy F. Landry.)

The Witness: Yes, sir, I did.

The Court: No doubt in your mind?

The Witness: No, sir, there isn't, your Honor I can give you the license number of the car. I took it down.

The Court: Speak up louder so the people can hear you. They all have a right to hear.

The Witness: 2 Z 45681 was the license number of the car.

Mr. Jensen: May I ask an additional question?

The Court: Yes.

Q. (By Mr. Jensen): Did you check that license out with the registration? A. Yes, sir.

Q. Did you determine the ownership of it?

A. Yes, sir, I did.

Q. To whom was it registered?

A. Eugene Rayson.

The Court: Cross examine.

Cross Examination

Q. (By Mr. Neblett): Sergeant Landry, I understood you to say there were two occasions on which you saw Eugene Rayson on the 14th, two occasions. A. I think I stated one.

Q. I thought you said you had seen him twice on that day. Am I mistaken?

A. Oh, yes, sir. It was twice.

Q. The first time you saw him, where was it? I didn't quite get it.

A. The first time I saw him was as he came out of a house on 97th Street.

(Testimony of Algy F. Landry.)

Q. Do you remember the number of that house?

A. It is 624, I believe, sir, East 97th.

Q. What? A. 624 East 97th.

Q. Where did he go from there?

A. He proceeded north on 97th Street.

Q. What time of the day was this? [321]

A. It was exactly 10:25 a.m. in the morning.

Q. How far did you follow him?

A. I proceeded behind him between varying degrees, if I got a car, a block or a block and a half behind him.

Q. How many miles did you follow him before you lost him?

A. Myself? I would estimate, rough estimation, about four miles.

Q. You lost him in the area of where?

A. Budlong and Slauson.

Q. What do you mean by that, the area?

A. That is the vicinity, sir, where I lost him.

Q. You know when he left. How far did you follow him? What street were you on, what number?

A. I had turned off, sir, onto Budlong, going north on Budlong one block south of Slauson. Mr. Rayson was crossing the car tracks north on Budlong, and that is where I lost him. That is the last time I saw him at the time.

Q. You saw him right on the corner of Budlong and Slauson, then, is that right?

A. He had crossed the railroad tracks which were on the north side of Slauson.

Q. Did you stop then and turn around and go

(Testimony of Algy F. Landry.)

back, or did you keep on up Budlong looking for him? A. I was looking for him. [322]

Q. Did you look around in that area from around Budlong and Slauson?

A. Yes, sir. I crossed where I had last seen him proceeding north up to 54th Street and made a right turn on 54th Street back to Hoover, and I patterned the streets by going up and down various streets in that location.

Q. You couldn't see him any more?

A. Yes, sir, I did.

Q. Where did you see him?

A. I saw him parked on 57th Street between Hoover and Broadway. His car was facing east on—that would be on the south side of the street.

Q. What location had you gone to pick him up? When you started out to find him, what location had you left? Had you left Mr. Richards' house?

A. I had been to Mr. Richards' house earlier in the day, and then I went over to Mr. Rayson's house, and I was staked out at that location.

Q. You knew, then, where Rayson lived, did you? A. Yes, sir, I did.

Q. Did you know the telephone number?

A. No.

Q. You knew it was in the book, didn't you?

A. I don't recall if I have ever seen it in the book.

Q. What time did you leave Mr. Richards' house on the [323] morning of September 14th?

A. Oh, approximately 9:00, 9:30.

(Testimony of Algy F. Landry.)

Q. You went over and staked out at Rayson's house? A. Yes, sir, I did.

Mr. Neblett: That's all.

Mr. Jensen: I have no further questions.

Mr. Neblett: If the court please, we have the book here.

The Court: Let's wait until we get this other witness here. You may step down.

(Witness excused.)

Mr. Jensen: Mr. Farrington, will you resume the stand?

WILLIAM R. FARRINGTON

called as a witness by and on behalf of the government in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Jensen): You understand you are still under oath in this matter? A. I do.

Q. During the months of August and September of 1955, will you state to the court on how many separate dates you observed the defendant Kelley in conversation with Norman Fletcher?

A. During August and September? [324]

Q. I mean including both August and September. A. On two separate occasions, sir.

Q. On two separate occasions? A. Yes, sir.

Q. I am going to ask you whether or not one of those occasions was August 22. A. It was.

(Testimony of William R. Farrington.)

Q. Were you present when they met on September 13th? A. I was.

Q. And what about September 22?

A. I was. Three separate occasions.

Q. Three occasions?

A. Three occasions, yes, sir.

Q. In all three of those meetings, were you in the company of Mr. Richards? Did you travel in the same vehicle?

A. As I recall, no sir. On the 13th we parted company and I took Fletcher and Landry, and Fletcher and I went and we installed this recording device.

Q. Going back to August 22, where were you located at the time you saw both Fletcher and Kelley?

A. Directly across the street there is a phone booth.

Mr. Neblett: Your Honor, this witness has gone all over this.

Mr. Jensen: No, your Honor. He testified to one item only, and that was what he heard on the telephone conversation. [325]

The Court: Overruled.

Q. (By Mr. Jensen): Where were you located at the time you observed him on August 22?

A. Directly across the street from the La Jolla Cleaners there is a phone booth. It is a little to the west of there, but you are able to look into the cleaners from that position.

Q. Were you in that phone booth at that time?

(Testimony of William R. Farrington.)

A. I was for a while.

Q. What would you estimate to be the distance from there to the cleaners?

A. A city street.

Q. I want an estimate of the distance.

A. It is approximately 50 feet, I should say.

Q. Did you have any visual aid at the time you were observing from there?

A. At that time I did not.

Q. At any other time on that meeting did you use a visual aid?

A. At that meeting, no, it was not necessary.

Q. Calling your attention to September 13th, did you observe Kelley in the presence of Mr. Fletcher on that date?

A. Yes, sir, I did.

Q. Where were they at that time?

A. They were in the cleaners at that time. [326]

Q. Where were you?

A. I walked down Sixth Street at that time.

Q. Did you look in the cleaners as you went by?

A. Yes, I did.

Q. How many times did you pass the cleaners on foot?

A. One time.

Q. Calling your attention to September 22, 1955, did you see Kelley, the defendant Kelley, and Norman Fletcher in each other's presence on that day?

A. Yes, sir, I did.

Q. Did they appear to be conversing?

A. They did.

Q. Where were they located at that time?

(Testimony of William R. Farrington.)

A. They were in front of the La Jolla Cleaners at that time.

Q. Was Mr. Kelley sweeping the street?

A. He was.

Q. Did they appear to be engaged in conversation? A. They did.

Q. Will you give us your estimate of the duration of that conversation?

A. Approximately, I should say three or four minutes.

Q. Did Mr. Fletcher just pause and go down the street or, you say, three or four minutes?

A. Yes. [327]

Q. Where were you located at the time you observed this conversation?

A. One block east in a vehicle.

Q. Did you use any visual aid at that time?

A. Yes, sir.

Q. What did you use?

A. The regular visual aids provided by the Sheriff's Department, Bausch & Lomb, 7 by 35 binoculars.

Q. You used a pair of 7 by 35 binoculars?

A. That is correct, sir.

Q. Directing your attention to September 14, 1955, in the morning hours of that day did you have occasion to see the defendant Rayson on that occasion? A. Yes, sir, I did.

Q. Where did you first see him on that date?

A. I first observed him driving north on Hoover.
The Court: What time of the day?

(Testimony of William R. Farrington.)

The Witness: That was approximately 11:00 p.m.

The Court: P. m?

The Witness: A. m. Excuse me, sir.

Q. (By Mr. Jensen): He was driving a vehicle?

A. He was.

Q. Do you recall the make and model of the vehicle? A. Yes, sir, I do.

Q. What was it? [328]

A. 1955 Mercury, Montclair coupe, green in color.

Q. How long was he within your vision on that occasion?

A. He was in my vision on two separate occasions there. He turned the corner. He was out of my vision for approximately 30 seconds.

Q. Now counting the 30 seconds, what was the total time you would say you had him under observation? A. Close to 20 minutes.

Q. During that 20 minutes did you move from position to position or did you stay fixed in one spot?

A. I moved one time from Hoover to 57th Street.

Q. What was the closest point that you reached to Mr. Fletcher on that occasion?

A. One block away, a short block.

Q. Can you give us an estimate of the distance?

A. 100 yards.

Q. Did you use any visual aids to observe him on this occasion? A. I did.

Q. Would you state what they were?

A. The regular visual aids provided by the

(Testimony of William R. Farrington.)

Sheriff's Department, Bausch & Lomb 7 by 35 binoculars.

Q. Did you have occasion to see Mr. Fletcher again at a later time that day?

A. Yes, sir, I did. [329]

Q. Again we are still speaking of September 14, 1955? A. Yes.

Q. Would you say the time and place you saw him?

A. Mr. Fletcher was in our company.

Q. I am sorry. I misspoke myself. The defendant Rayson, did you see him again on September 14th? A. Yes.

Q. Would you state the time and place you saw the defendant Rayson?

A. It was shortly after noon, approximately 12:30, quarter to 1:00 o'clock, as I recall, on 58th and just approximately 75 to 100 feet west of Main Street.

Q. How far away were you when you observed him on that occasion?

A. I was an equal distance west of the defendant at that time.

Q. You say 75 feet then?

A. 75 to 100.

Q. Was the defendant Rayson at any time in the presence of Norman Fletcher on that occasion?

A. He was.

Q. Did they appear to be in conversation?

A. They did. I would like to make a correction. I would say 75 to 100 yards. Excuse me.

(Testimony of William R. Farrington.)

Q. Did you use any visual aid on that occasion to observe [330] these two men?

A. I did, sir.

Q. Were they the 7 by 35 binoculars again?

A. They were.

Q. And 7 by 35 is a 7 power binocular, isn't it?

A. It is.

Q. It will reduce 70 yards to 10 yards, will it not? A. Approximately.

Q. And an 8 by 50 binoculars will reduce 80 yards to 10 yards, or 800 feet to 10 feet?

A. Yes, sir.

The Court: Do I understand at 12:30 you saw Rayson and Fletcher there?

The Witness: It was approximately that time. It was after the noon hour, when we received a call at approximately 12:00 o'clock—

Q. (By Mr. Jensen): Keep your voice up.

A. It was approximately a half hour to 20 minutes, as I recall it, after the call was placed from Rayson at approximately 12:00 o'clock when he directed Fletcher to come to 58th and Main.

Mr. Jensen: Does your Honor have any further questions?

The Court: No.

Mr. Jensen: I have one or two other questions.

Q. In the afternoon of September 15th at approximately [331] 3:00 or 3:30 p.m., did you accompany Mr. Richards to the place of residence of Norman Fletcher? A. On the 15th?

Q. On the 14th. A. You said the 15th.

(Testimony of William R. Farrington.)

Q. I beg your pardon. May I correct my question? On the afternoon of September 14th at approximately 3:30 p.m. in the afternoon, did you accompany Mr. Richards out to the residence of Mr. Fletcher? A. Yes, I did.

Q. Did Mr. Fletcher drive his own car?

A. He did.

Q. Approximately what time did he arrive at his residence?

A. I don't recall the exact time, sir.

Q. What is your best memory?

A. Approximately 4:00, close to 4:00.

The Court: Keep your voice up.

The Witness: Close to 4:00 p.m.

Q. (By Mr. Jensen): Did you observe Norman Fletcher leaving that vehicle at his residence?

A. Yes, sir, I did.

Q. Was his vehicle within your scope of observation at that time?

A. No, sir, it was not. He pulled into the garage and [332] I saw him walk out of the garage into the yard.

Q. When was the next moment that you saw Fletcher?

A. Approximately an hour or an hour and 15 or 20 minutes from the time we first arrived.

Q. That would be somewhere around 5:00 o'clock to 5:15.

A. Close to 5:00, yes, sir.

Q. Did he re-enter his vehicle at that time or re-enter the garage? A. He did.

(Testimony of William R. Farrington.)

Q. Did he drive away in his vehicle?

A. He did.

Q. Had that vehicle been moved during that time, would you have been able to observe it?

A. Yes, sir.

Q. Was it moved from the garage?

A. It was not.

Q. What is your memory as to the time when you returned to Mr. Richards' house after the meeting you observed between Fletcher and Rayson in the afternoon of September 14th? What time did you get back to Mr. Richards' house after that meeting?

A. After the meeting?

Q. After the meeting in the afternoon. That would be the one you testified to at Main and 57th or thereabouts, Main and 58th. [333]

The Court: He said about 12:30. Maybe that's the afternoon.

The Witness: I imagine it was approximately half an hour later.

Q. (By Mr. Jensen): Around 1:00 p.m.?

A. Yes.

Q. Did Mr. Fletcher leave your presence from 1:00 p.m. on that date, when you got back to Mr. Richards' house, did Mr. Fletcher leave your presence between 1:00 p.m. on that day, or your observation, either one, between 1:00 p.m. and the 4:00 o'clock when you saw him go in his house?

A. No, sir, he did not.

Q. He was either with you or under your observation during those hours?

A. He was.

(Testimony of William R. Farrington.)

Q. Did he make any other contact with the defendant Rayson? A. He did not.

The Court: After 4:00 o'clock, did you keep him under surveillance?

The Witness: Up until the time he left his home to go on this errand to pick up his girl friend, he was under surveillance.

The Court: He got back to the house at 4:00 o'clock?

The Witness: No. Approximately 6:10, 6:15.

Mr. Jensen: He means from picking up his girl.

The Court: What happened between 4:00 and 6:00 o'clock?

The Witness: He was under our surveillance that whole time.

The Court: I am sorry. You said he went back——

Mr. Jensen: There is a little mix-up.

The Court: All right. You straighten it out.

Q. (By Mr. Jensen): I asked you, between 1:00 p.m. and 4:00 p.m., and you said he was either under your surveillance or actually with you.

A. From 1:00 p.m. until the time we took him to his house.

Q. Then he entered his house and you did not actually see him for another hour or so.

A. That is correct.

The Court: Did you see the car?

The Witness: We could see the rear of the car in the garage.

The Court: You could see that?

(Testimony of William R. Farrington.)

The Witness: Yes.

The Court: You were watching the house, were you?

The Witness: We were in the alley, Agent Richards and myself.

Q. (By Mr. Jensen): The car was not moved?

A. The car was not moved. [335]

Q. Up until 5:00 p.m.

A. Up until 5:00 p.m., up until he left.

Q. You didn't observe him again after 5:00 p.m., is that correct? A. That is correct.

Q. Until around 6:00 o'clock when he rejoined you at Mr. Richards' house.

A. That is correct.

Mr. Jensen: I have no further questions.

Mr. Neblett: I don't think we have any cross examination.

(Witness excused.)

Mr. Jensen: I would like to ask one question of one witness more, your Honor.

The Court: All right.

NORMAN FLETCHER

recalled as a witness by and on behalf of the government in rebuttal, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Jensen): You understand you are under oath in this matter? A. Yes.

Q. I am going to ask you a question relative to

(Testimony of Norman Fletcher.)

three things. I want to know whether you made a telephone call to Rayson, you placed a call at any time on the 15th, or whether [336] or not you paid him back a loan—well, excuse me.

I want to know whether you made a telephone call to the defendant Rayson at any time on the 14th of September 1955, or whether at any time you paid him back money that you owed him on the 14th of September 1955.

Mr. Neblett: To which we object on the ground it is improper.

The Witness: I did not.

The Court: I am restricting him to one question.

Mr. Neblett: Very well. I will withdraw the objection.

Q. (By Mr. Jensen): What is the answer?

A. I did not.

Mr. Jensen: I have no further questions.

The Court: Anything else?

Mr. Neblett: That's all.

(Witness excused)

Mr. Jensen: I don't want to in any way derogate from the effectiveness of counsel's evidence, but I will stipulate to the book.

The Court: I thought these books were set up so that they would show a payment due on a certain date.

Mr. Jensen: They may be, but this one isn't.

Mr. Neblett: Pardon me, your Honor.

The Court: Go ahead and ask some questions about it. [337]

EUGENE RAYSON

recalled as a witness by and in his own behalf, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Neblett): Mr. Rayson, you bought this Mercury car. Where did you finance it?

A. Bank of America.

Q. You had financed it on a 36 payment plan at \$84.58 a month? A. That's right.

Q. Is this your payment book?

A. Yes, sir.

Q. Speak up. A. Yes, sir.

Q. That book shows you made two payments on the car. A. That's right.

Q. One was August 15 and the other was September 15, is that right? A. That's right.

Mr. Neblett: Your Honor please, I suppose we can just offer this in evidence.

The Court: You better not offer it in evidence. He may need it. [338]

Mr. Jensen: I will agree with counsel the court may examine the document. In fact, I will stipulate, if counsel desires, that on September 15th he made a car payment somewhere in the vicinity of \$80 to the Bank of America on 110th Street, or wherever it was made.

The Court: All right. I won't take the witness' word for it.

Q. (By Mr. Neblett): At any time on Septem-

(Testimony of Eugene Rayson.)

ber 14, 1955, Mr. Rayson, were you at Budlong and Slauson in the City of Los Angeles?

A. No, sir.

Q. Were you at any time in the vicinity of that street crossing? A. No, sir.

Q. On the 14th of September 1955?

A. No, sir.

Q. On the 14th of September 1955, did Norman Fletcher pay, hand or give to you \$700?

A. No, sir.

Mr. Jensen: I am going to object to this. I think this is the same thing he testified to on direct.

The Court: No, I don't believe he testified to \$700. Overruled. The answer was "No, sir."

Q. (By Mr. Neblett): Did he pay you any sum of money on September 14th other than the \$50 to which you have already [339] testified?

A. No, sir.

Mr. Neblett: That's all, your Honor.

The Court: Any questions?

Mr. Jensen: No questions.

The Court: You may step down.

Mr. Jensen: We have no further testimony.

Mr. Neblett: My co-counsel calls my attention to something else.

Q. You heard the testimony of one of the witnesses here, Fletcher's testimony, he gave you another \$700 on a day subsequent to September 15th. Did you hear that testimony? A. Yes, sir.

Q. Was any such money paid to you?

A. No, sir.

(Testimony of Eugene Rayson.)

Q. Fletcher didn't give you \$700 on September 14th or any other time? A. No, sir.

Q. Did he ever pay you any other sum of money other than \$50 at any time between August 22 and the day of the filing of this indictment? Did Fletcher pay you any sum of money, give you any sum of money, hand you any sum of money, other than \$50 to which you have already testified?

A. No, sir.

Mr. Neblett: That's all. [340]

Mr. Jensen: No questions.

The Court: You may step down.

(Witness excused.)

The Court: Do you rest?

Mr. Neblett: Yes, your Honor.

The Court: It seems to me that this case is going to have to be decided upon the question of the credibility of witnesses. Consequently, I am going to continue the case to 10:00 o'clock in the morning.

In the meantime, I wish counsel would review their notes so you can point out to me, if you can, the discrepancies in the testimony. You know, I have a lot of experience in discrepancies in testimony. I have been trying a number of Chinese cases. They all turn upon the question of discrepancy of testimony. I have been trying those cases for three years.

I wish you would review your notes of the testimony, and I have got some notes here, too. I have some matters that I want to call to your attention, but I will give you those in the morning. [341]

December 1, 1955, 10:00 o'clock, a.m.

The Clerk: No. 24,517 and 24,568, United States vs. Ollie W. Kelley and Eugene Rayson, further trial.

Mr. Neblett: Ready for the defendants.

Mr. Jensen: Ready for the government. May I inquire of the clerk whether all of the government's proposed exhibits have been admitted?

The Court: All the exhibits have been admitted, I think.

Mr. Jensen: I only had a question about No. 4, your Honor.

The Clerk: Yes, they are all admitted.

The Court: Are you ready?

Mr. Jensen: Yes.

The Court: All right. I am ready now to proceed in the Kelley case. There are a very few things I want to know in regard to this Kelley case.

Mr. Jensen: I didn't propose to review the evidence in my summation, your Honor, because I am sure you followed all the testimony that came in yesterday and the day before and no purpose would be served. There are a couple or three points I would like to make in my opening statement, and then perhaps give the time over to counsel for defense. Does your Honor care to pose any questions?

The Court: I was going to ask you a question.

Mr. Jensen: All right.

The Court: You know, if this wasn't a narcotics case, it would be much easier to decide than a narcotics case, because in a narcotics case, it is a case that is approached probably with a different point

of view. I said before, and I think possibly I am right, that this case is going to be decided upon the credibility of the witnesses.

Mr. Jensen: I believe so, your Honor.

The Court: The government's main witness is a three-time loser.

Mr. Jensen: That's right.

The Court: He comes into court impeached under the law.

The defendant Kelley is a one-time loser. He comes into court impeached under the law.

Of course, under those circumstances, I could disregard the testimony of either one of them, if I wanted to. The only evidence we have, and I want to know if I am correct, against Kelley is that Rayson went down and talked to him.

Mr. Jensen: Fletcher, your Honor.

The Court: Fletcher, that's right. Fletcher went down and talked to him. He went down first on the 22nd.

Mr. Jensen: Of August.

The Court: 22nd of August. He said nothing happened and he went back on the 13th of September, pretty near a month.

Now, Kelley said he only came down twice. Fletcher [344] said he went down three times. Well, I can understand there might be a legitimate mistake. I don't know. If somebody had asked me how many times they had been in my office, whether two or three or four or five, I couldn't tell. Just let me finish and then you can talk. There might have been a mistake.

Now, there was a conversation and Kelley said when he came down, he said he wanted to buy some stuff, and he said, "I don't want to talk about stuff. I am under probation. I have been instructed not to talk about it and I don't want to talk about it at all."

He was only there a few minutes. He came back on the 13th. Only there for a few minutes. We have two versions of the conversation, both by ex-criminals.

Mr. Jensen: We have a little bit more, your Honor.

The Court: I am talking about the conversation. You haven't anything on the conversation more, have you?

Mr. Jensen: That's right.

The Court: You don't know what has been said except from the testimony of these witnesses.

Mr. Jensen: That's right, your Honor.

The Court: Now, as far as I know, the only evidence in this case that connects Kelley with this conspiracy is the fact that the government's witness said that he gave Kelley a telephone number. [345]

Mr. Jensen: Yes, your Honor.

The Court: And later he was called by Rayson. He said he didn't give Rayson the telephone number. He said he gave Kelley the telephone number. As far as I know, that is the only positive evidence you have got against Kelley. What other evidence is there?

Mr. Jensen: I think that's it. There is one thing. Fletcher's statement is broader, your Honor please.

He said he gave no one else that number. September 13th in the morning Fletcher was given the number by Mr. Richards. He didn't have the number prior to that. All the testimony is to that effect. He was given the number just before he saw Kelley. To determine whether or not Fletcher may or may not be telling the truth about the conversation with Kelley on September 13th that morning for a moment, Fletcher said he told Kelley he would be at that number between 8:00 and 10:30 the following morning, and right on the nose at 10:15 in comes the telephone call.

The Court: That is the only positive evidence, as far as I know, you have against Kelley.

Mr. Jensen: It is substantial corroboration, though, of the Fletcher statement to Kelley.

The Court: Fletcher said he gave the telephone number to Kelley. Kelley says he didn't give the telephone number to him. [346]

Mr. Jensen: That's right.

The Court: Let's look at Fletcher's testimony. I don't know. You know, during the trial when Fletcher was on the stand, he had difficulty in answering questions, in following questions. I asked him if he had memorized what he was trying to say, because he was saying it over and over.

Mr. Jensen: I think that was Richards, your Honor.

The Court: Was it Richards?

Mr. Jensen: Yes.

The Court: I guess that's right, it was Richards.

Mr. Jensen: I don't think that was true of Fletcher.

The Court: Yes, that was Richards.

Mr. Jensen: He had a straightforward manner up there on the stand.

The Court: Isn't that the only definite evidence you have got against Kelley, is this telephone number?

Mr. Jensen: There is the subsequent conversation, your Honor, on the 22nd of September where this pattern followed exactly the same course.

The Court: But we don't have any testimony of what happened, what the conversation was about.

Mr. Jensen: If your Honor please, the pattern is identical, though. If you will recall, Fletcher went down and saw him on the morning of the 22nd, said he wanted to make an additional purchase. Your Honor may or may not care to believe that, [347] but consider just for a moment, immediately after that in the afternoon of the 22nd of September again, Rayson called on the phone and asked him if he wanted to see him, and they set up another meeting in the afternoon of September 22nd. That is two identical patterns. In each instance the witness Fletcher first contacted Kelley, and subsequently he was contacted by Rayson immediately afterwards, your Honor.

The Court: Mr. Neblett, what have you got to say about this Kelley episode? What is the evidence against Kelley?

Mr. Neblett: I don't know of any evidence ex-

cept what your Honor has outlined. I was going to say that I thought I believed Kelley's testimony to be true. He told him exactly what he said he did tell him. Besides that, there is another element which I think is terrifically important, and that is that this man Fletcher when he talked to him on two of these occasions so testified himself, he had on this recording instrument, and that recording instrument would have the conversations, and if it didn't carry what Kelley said it carried, they would have used it, your Honor.

The Court: I don't know. The testimony was that it wasn't turned on the first time. There wasn't anything on the tape. Of course, the testimony also was that as far as the second time was concerned, it was unintelligible. The witness said after listening to it two or three times, he could make it out. The first time he didn't get it. It was [348] unintelligible. If that was the case, I wouldn't admit it if it was offered.

Mr. Neblett: Your Honor, it should have been brought in anyway, and then the court could have determined whether it was unintelligible. I think the only reasonable hypothesis is that it didn't show what they testified to against Kelley.

The Court: I don't believe that the government would suppress evidence. I don't believe so. I have enough confidence in the United States Attorney's office that if that showed that there was no conversation relative to dope, heroin, narcotics, they would admit it.

Mr. Neblett: If your Honor please, I am not

charging this against the United States Attorney's office. I am charging it against the overzealous narcotics enforcement officers, because there is no information before the court, no information in our hands that the United States Attorney's office ever listened to it at all. I don't know that they ever did. Certainly there is nothing before the court to show that they ever listened to it.

I certainly am not charging them with suppressing evidence. I don't charge that for one moment.

But I do feel that with the testimony of Fletcher, that if that recording instrument had brought out testimony satisfactorily, that would have been the first thing brought in here. [349]

But coming back to what your Honor asked me, I don't see anything against Kelley at all except what your Honor has just outlined. The fact that Fletcher said Kelley gave to him a telephone number where Rayson could be reached, if your Honor will remember the testimony of Fletcher and of Rayson, it is that Fletcher had this telephone number all the time. He was a frequent visitor in the smoke shop over a period of time. Besides, the name was right there where he could see it in the telephone book, and it was on the telephone booth in the place. There was no occasion for Kelley to give him the telephone number because Fletcher already knew it.

The Court: I know, but I am talking about the telephone number that was given so that Fletcher could be called, not the telephone number to call the defendant Rayson, but the fact that I think

Fletcher testified he gave Kelley a telephone number where he could be reached.

Mr. Neblett: Yes, your Honor, but he never was called.

The Court: That is the telephone number I am talking about.

Mr. Neblett: Your Honor picked out that point that Fletcher went to see Kelley on the 22nd of August. 19 days later he came back. They hadn't heard a word from Kelley. There was no reason for his coming back unless he got nervous about what we think, what we believe the evidence shows, that this was a set deal by the agents to trap Kelley and Rayson, [350] to entrap them.

The Court: Well, Colonel, I disagree with you relative to entrapment. It may have been a set deal and it may have been a plan to see whether or not Kelley would sell narcotics if he had the opportunity. But I think it lacks a lot of the requirements of an entrapment. If I decide this case upon the question of entrapment, we wouldn't argue any more at all. We would decide it and have it over with.

Mr. Neblett: That is my view, the evidence shows that sort of a deal. I may be mistaken. You are talking about the telephone number of Richards?

The Court: That's right, Richards' telephone number.

Mr. Neblett: Which was said to be given on the second trip.

The Court: It was a secret number, unlisted number. According to the testimony, if I remember

correctly, Fletcher gave this number to Kelley. He says he didn't give it to Rayson, but Rayson the next day called him.

Mr. Neblett: Well, remember, your Honor, that Rayson also testified and Fletcher also testified that he was in contact with Rayson during that period. There was no need to ask Kelley for that number.

Mr. Jensen: I think that is a misstatement of the fact, your Honor. I think the record will show that the only occasion when Fletcher and Rayson were together was some time [351] about 12 days prior to the 14th of September when some money was borrowed, and that is Mr. Rayson's testimony.

The Court: Colonel, while I have got you there, I want to ask you a question relative to Rayson. Rayson testified very definitely relative to the 14th of September. He testified that he was over at the smoke shop. When he went home or started home, he denies seeing Fletcher, and yet we have these police officers who locate him with Fletcher. Why should I disbelieve the police officers' story? No question about it that Farrington said that he saw Rayson at 11:00 o'clock a.m. driving north on Hoover.

At 12:30 he saw him at 58th and Main with Fletcher.

Now, according to Rayson's testimony, he wasn't there at all. Why am I going to believe these police officers? If that is true, then how can I believe anything that Rayson said.

Mr. Neblett: Your Honor, the very fact that these men are police officers and in the narcotics

detail doesn't raise them to any higher grade than any other witness. We know very well in these narcotics cases that the zeal and energy for prosecution is so great that I feel their testimony just isn't true. I will tell you what is wrong with their testimony.

This has to do with one of the things that impressed me in the testimony, and I hope impresses the court. [352]

These police officers had Fletcher right with them all day long on Wednesday, on the 14th. They kept right with him. They followed him down once that that he was supposed to have given \$700 to Rayson. Of course, I don't believe he ever gave the \$700.

The Court: What happened to the \$700.

Mr. Neblett: Well, I think Fletcher still has it. I will tell you why I think that. You notice Richards testified he searched him carefully when Fletcher left to meet Rayson. He gave him \$860.

The Court: Gave Fletcher \$860 and Fletcher had no other money on him at all except the \$860.

Mr. Neblett: Yes. Then Fletcher went down and had a conference with Rayson. He came back about—well, say 3:40, I think the testimony is, that afternoon. He gave Richards \$160, but Richards did not search him nor his car.

Mr. Jensen: That is a misstatement of the record, your Honor.

Mr. Neblett: It is not, your Honor. I would like counsel to show me where there is another statement. He didn't search him or the car, and he allowed him to leave.

Mr. Jensen: That isn't so.

The Court: Now, just wait a minute. Let him finish his statement.

Mr. Jensen: I am sorry. [353]

Mr. Neblett: Richards allowed him to leave and go to Beverly Hills and pick up his girl friend. He was gone for two hours. Nobody knows where he was, except he said he was going to pick up his girl friend. That was right at the critical period when this important thing was going on. They let him go out and keep what we would call a social engagement. That is when he disposed of that money. He might have had it on his person for all they know, because they didn't search him upon his return or they didn't search his car.

The Court: That is an argument. There is no evidence he disposed of any money during that trip.

Mr. Neblett: There is no evidence he ever gave any to Rayson except the \$50 he owed him.

The Court: There is evidence \$700 was given him, or \$860.

Mr. Neblett: No, 700, your Honor. I believe the testimony of Fletcher is he got \$700. But if these police officers are telling the truth, why didn't they search him at the time he returned to see whether he had got rid of the \$700. Why didn't they search his car? Why did they let him go off and spend two hours? That is argument, but that is the circumstance in the case. It is our theory that is when that heroin was planted at the railroad sign, when he was out there. He had somebody else make these calls. I think the police officers are not entitled to belief when they say he had only [354] seen Rayson

about twice six or eight months before this time, and he could recognize his voice over the telephone. That is incredible.

The Court: Mr. Rayson testified on the stand that he was in the smoke shop and that Fletcher called him on the phone. I think he said he called at 4:00 o'clock in the afternoon. He hadn't seen Fletcher. He got in his car and he went home and met him down on the street where he was paid the \$50.

Now, according to Rayson's own testimony, he hadn't seen Fletcher up to 4:00 o'clock that afternoon.

Mr. Neblett: That's right.

The Court: And yet we have Sergeant Landry and we have Sergeant Farrington and we have Fletcher——

Mr. Neblett: And Mr. Richards.

The Court: Who?

Mr. Jensen: And Mr. Richards.

The Court: And Richards, who testify that Fletcher and Rayson were seen together at 12:00 o'clock, 11:00 o'clock, 12:00 o'clock. How are you going to reconcile that testimony?

Mr. Neblett: I just don't think it is true, that's all.

The Court: You think four people have come up here and agreed to something that isn't true?

Mr. Neblett: I think they will do anything, most anything. The way this case has turned out, I think they will testify to most anything to bring about a conviction. I feel [355] that way about it.

The Court: Well, you are representing your clients.

Mr. Neblett: Pardon me, your Honor?

The Court: You are representing your clients and you can feel that way, but I am not representing your clients. I am trying to look at the evidence as it has been presented to the court.

Mr. Neblett: Well, even so, your Honor, I do say that it is incredible that they would have known his voice, that these officers would have known his voice.

Of course, Fletcher told them it was Rayson who was calling, who was talking that afternoon at 4:00 o'clock. That is fully explained, I think, by the fact that Rayson does admit he was called by Fletcher in the afternoon about 4:00 o'clock, and he went down to 56th and Broadway and met him, and there Fletcher paid him the \$50 that he owed him.

Then he drove off and he didn't see him any more that day or hadn't seen him any more from that day to this.

The Court: But what about these meetings? What about this meeting at noon or at 11:00 o'clock? According to Rayson's testimony he was at the smoke shop then. He was not running around. He wasn't down there at 11:00 o'clock on North Hoover, or 12:30 at 58th and Main. He didn't see Fletcher at 58th and Main. Am I going to disregard the testimony of the officers? [356]

Mr. Neblett: If you believe it doesn't prove anything.

The Court: I don't know whether it proves any-

thing, except it throws some question upon the entire testimony of Rayson.

Mr. Neblett: That is true, your Honor, but supposing that all of Rayson's testimony is disbelieved, there is still not enough evidence in our opinion to convict him. The government hasn't made out a case.

The Court: How about picking up the stuff? No question that was picked up. The officers said it was picked up.

Mr. Neblett: I don't have any doubt that, but what is the connection between that and Rayson? Just to show the unreliability of the police officers' testimony, Sergeant Landry, I think it was, who pursued him that afternoon, said he pursued him to the crossing at Budlong and Slauson, the railroad crossing there, and lost him. That would have been very simple, to stay around there and see whether he planted it.

Mr. Jensen: That was in the morning at 11:00 a.m., long before the delivery.

Mr. Neblett: Was that in the morning?

Mr. Jensen: Yes, that was when he followed him from his home into town at 11:00 o'clock in the morning.

Mr. Neblett: I am sorry about that. I made a mistake. But it doesn't prove this case beyond a reasonable doubt even [357] if you disregard all of Rayson's testimony. The fact is there is no showing whatever that he had anything to do with the planting of that heroin, not any showing except some conversations Fletcher said he had with the man.

The Court: According to the evidence, he was paid \$700, and after being paid the \$700 Fletcher was told where to go to pick up the stuff, and he went and got it.

Mr. Neblett: He was told later that afternoon where to go and pick it up on the telephone. Fletcher and they went out and picked it up at 6:30. I wondered why somebody didn't take fingerprints off those packages. The government didn't take them.

The Court: I don't know whether you can off cellophane or not.

Mr. Neblett: You can off the paper bag. I think cellophane is one of the best.

The Court: I don't know.

Mr. Neblett: I believe so. But I wonder why they didn't see whether Rayson's fingerprints were on it or not. But there is no testimony about that.

If the court please, if you disregard the testimony of Rayson, there isn't anything to prove beyond a reasonable doubt that he got this. It is incredible that anybody, that Rayson would call him up and then plant that down there on the railroad track in broad daylight. I think the court will take [358] judicial notice of the fact that on September 14th we had daylight savings time in Los Angeles. The officers testified they picked this up between 6:00 and 6:30, as I recall it. At that time it still was daylight.

The Court: There is no question but what somebody put it there.

Mr. Neblett: No question about that.

The Court: And somebody put it there probably in the daylight.

Mr. Neblett: My estimate of the evidence is that I think this is a reasonable conclusion, that that two hours when Fletcher was gone, he put it there. In other words, he sold the government \$700 worth of heroin. He still has the money, if he hasn't spent it. That is what happened. Fletcher was gone for two hours. No one knows where he was. When he came back he got a telephone call from somebody who said, "Go down to the railroad track at Budlong and Slauson and pick it up."

That is the crux of this case, as we see it. It is all circumstantial evidence as to who put it there. This is a circumstance, his being gone for two hours.

The Court: Well, Colonel, I think there is sufficient evidence in the case to justify a finding of Rayson guilty. I think there is sufficient evidence in this case for that.

Mr. Neblett: Mr. Dudley calls my attention to the fact that Fletcher testified he had known Rayson since 1953, shortly [359] after he came back from the penitentiary, I think, and that he was a frequenter or visitor around the smoke shop run by Rayson. May he give his idea?

The Court: Yes, go ahead.

Mr. Dudley: I think Mr. Neblett is a little confused about the smoke shop and the telephone call. As I recall the testimony of Fletcher, he testified that Richards had given him this unlisted telephone number and that he had given that to Kelley.

The Court: That's right.

Mr. Dudley: That is the point we are talking about. Fletcher also testified that he had known Rayson since 1953, and as I recall, at least the inference is from the testimony, he had seen Rayson many times since 1953.

The Court: Yes, and he could have given this telephone number to Rayson.

Mr. Dudley: That's true. He could have got the telephone number off of Richards' telephone. That happens so often.

The Court: Yes, he could have done that.

Mr. Dudley: So there is no connection with Kelley.

The Court: We are talking about Rayson now.

Mr. Dudley: At the moment.

The Court: Rayson is the one we were talking about.

Mr. Dudley: I thought you had stopped talking *about* [360]

The Court: No. Well, as far as Kelley is concerned, Kelley has been convicted in this court. He is on probation. If he would be found guilty in this case, his probation might be revoked and he would be sentenced and he would probably be sentenced for a long, long time in this case. I certainly don't want to send a defendant to penitentiary for three or five years upon the sole testimony that the main witness of the government said he gave a telephone number to Kelley. I think that this telephone number could have been given to Rayson. There was lots of opportunity. The government didn't have

Fletcher under surveillance all the time. He wasn't watched 24 hours a day. He could have passed the telephone number to him.

Consequently, I am going to find the defendant Kelley not guilty as to Count 1, not guilty as to Count 2, and not guilty as to Count 3.

The defendant Rayson, I am going to find not guilty as to Count 1, Guilty as to Count 2 and guilty as to Count 3.

Is the defendant Rayson in custody?

Mr. Neblett: No, your Honor.

The Court: He may remain on bond until the time of sentence. I will refer the matter to the probation department for pre-sentence report and set the matter down for hearing on December 19th at 2:00 o'clock in the afternoon.

The defendant may remain on bond until the time of [361] sentence.

The Clerk: The bond is in the other case. Do you want to continue that case to the 19th then?

The Court: Yes. The other case should be continued to the 19th and not have the necessity of putting up a new bond.

Mr. Neblett: And Kelley's bond is exonerated?

The Court: Kelley's bond will be exonerated.

Will you take Mr. Rayson up to the Probation Department?

Mr. Neblett: Yes, your Honor.

The Court: That's all in this case then. [362]

[Endorsed]: Filed December 28, 1955.

[Endorsed]: No. 15021. United States Court of Appeals for the Ninth Circuit. Eugene Rayson, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: February 3, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15021

EUGENE RAYSON, Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANT'S STATEMENT OF POINTS
ON APPEAL

To the Clerk of the United States Court of Appeals for the Ninth Circuit, and to Laughlin E. Waters, U. S. Attorney, Louis Lee Abbott, Assistant U. S. Attorney, and Robert John Jensen, Assistant U. S. Attorney, Attorneys for the Appellee:

Comes now the appellant, Eugene Rayson, and, pursuant to Rule 17 (6) of this Court, files his

statement of the points on which he intends to rely on this appeal:

1. The District Court erred in denying defendant's motion for acquittal made at the conclusion of the Government's case.

2. The evidence is insufficient to support the finding of the District Court (the case was tried by the Court without a jury, a jury having been expressly waived in writing by the Government, and by the defendant and appellant, Eugene Rayson) that the defendant was guilty as charged in counts II and III of the indictment.

3. The decision of the District Court, finding the appellant, Rayson, guilty on counts II and III of the indictment, and sentencing him to three years in the penitentiary and finding him \$5.00 on each of the two counts, the penitentiary sentences to run concurrently, is not supported by substantial evidence, or any evidence sufficient to sustain the decision that the appellant was guilty as charged.

4. The findings by the District Court that the defendant and appellant was guilty on counts II and III of the indictment are both clearly erroneous.

5. Neither the findings of guilty nor the judgment is supported by substantial evidence.

6. Both the findings of guilty and the judgment are contrary to the weight of the evidence.

7. The District Court erred in admitting the testimony of the witness Norman Fletcher, to which objections were made.

8. The District Court erred in admitting testi-

mony of the witness M. P. Richards, to which objections were made.

9. The District Court erred in admitting the testimony of the witness A. F. Landry, to which objections were made.

10. The District Court erred in admitting the testimony of the witness William R. Farrington, to which objections were made.

11. The District Court erred in ruling that the evidence did not, as a matter of law, disclose an entrapment of the defendant and appellant.

12. The District Court erred in ruling that the telephone conversations between the witness Norman Fletcher and the defendant and appellant, Eugene Rayson, a recording instrument being attached to the telephone and records made of such conversations, were admissible over the objection of the defendant.

13. The District Court erred in ruling that the telephone conversations between the witness Norman Fletcher and the defendant and appellant, the same being listened in on by other persons, were admissible.

14. The District Court erred in holding that the evidence obtained by the telephone conversations was admissible and that the same was not barred by the provisions of 47 U.S.C., Section 605.

15. The District Court erred in denying defendant and appellant's motion to strike the testimony of the telephone conversations between the witness Norman Fletcher and defendant and appellant, a recording instrument being attached to the tele-

phone and recordings made of such conversations, and other witnesses, who afterwards testified, listening in to the conversations.

16. The District Court erred in denying the defendant's motion for a new trial.

17. There is no evidence whatever to show that the defendant and appellant, Eugene Rayson, did ever receive, conceal or transport or facilitate the concealment or transportation of a narcotic drug, charged in count II of the indictment.

18. There is no evidence whatever to show that the defendant and appellant, Eugene Rayson, did ever sell or facilitate the sale of a certain narcotic drug to one Norman Fletcher, as charged in count III of the indictment.

19. The District Court erred in denying the defendant's motion for an acquittal at the close of the prosecution's case.

20. The District Court erred in denying the defendant and appellant's motion for new trial.

Dated: February 9, 1956.

/s/ WM. H. NEBLETT,
Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 10, 1956. Paul P. O'Brien, Clerk.

